

No. 10526

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United States <sup>9</sup>  
Circuit Court of Appeals  
For the Ninth Circuit.

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AL C. FOX, COLLISON GILBRETH, R. E.  
SUTTON, ORVILLE HUTCHINS, JOHN S.  
JONES, NEPHI N. DUSTIN, MERRILL C.  
HUTCHINS, H. M. CHILDERS, WARREN  
S. MORDEN, EDWARD F. O'NEILL,  
PHILIP EDGAR FERRIS,

Appellants,

vs.

SUMMIT KING MINES, LIMITED, a corpora-  
tion,

Appellee.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the District of Nevada

FILED

SEP 18 1943

PAUL P. O'BRIEN  
CLERK



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Upon Appeal from the District Court of the United States  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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MARTIN J. SCANLAN, ESQ.,

308 E. C. Lyon Building,  
Reno, Nevada,

For the Appellants.

MESSRS. THATCHER & WOODBURN,

206 North Virginia Street,  
Reno, Nevada,

For the Appellee. [1\*]

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\*Page numbering appearing at foot of page of original certified  
Transcript of Record.

In the District Court of the United States, in and  
for the District of Nevada.

## Civil Action

File No. 232

AL C. FOX, GOLLISON GILBRETH, R. E.  
SUTTON, ORVILLE HUTCHINS, JOHN S.  
JONES, NEPHI N. DUSTIN, MERRILL C.  
HUTCHINS, H. M. CHILDERS, WARREN  
S. MORDEN, EDWARD F. O'NEILL,  
PHILIP EDGAR FERRIS,

Plaintiffs,

vs.

SUMMIT KING MINES, LIMITED,

Defendant.

## AMENDED BILL OF COMPLAINT

That by stipulation of counsel for the respective parties the plaintiffs file herein this, their amended Bill of Complaint and for cause of action allege:

## I.

That plaintiffs severally assert a right arising out of a series of transactions or occurrences where questions of law or fact common to all will arise in the action in accordance with Rule 20 and by reason of there being common questions of law and fact affecting the several rights of all of the plaintiffs and a common relief is sought and in accordance with subdivision (3) of Rule 23 of the Rules of Civil Procedure, for the District Courts of the United States, do hereby bring this action to recover

from defendant unpaid overtime compensation in the estimated amount of \$3,953.83 and an additional equal amount of \$3,953.83, liquidated damages pursuant to Section 16 (b) of the Fair Labor Standards Act of 1938 (Public No. 718, 75th Congress; 52 Statutes 1060), hereinafter referred to as the Act. [2]

## II.

Jurisdiction is conferred on the Court by Section 41 (8) 28 U.S.C.A., (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce", and without regard to the citizenship of the parties or the sum or value in controversy, and by Section 16 (b) of the Act.

## III.

Defendant is a corporation organized and existing under and by virtue of the law of the State of Nevada and at all times hereinafter mentioned was engaged in mining and milling gold and silver ores and reducing the same to precipitates or bullion at and within the County of Churchill, State of Nevada, and all of which was for transportation in interstate commerce; that substantially all of said gold and silver ores and minerals mined and produced by the defendant have been processed, reduced, concentrated and retorted by the defendant within the State of Nevada and transported in interstate commerce, and have been sold, offered for transportation, transported, shipped and delivered in interstate commerce from the defendant's mill or reduction works, in the County of Churchill, within

the State of Nevada, to San Francisco, in the State of California.

#### IV.

That during the work weeks beginning in January, 1940, and ending April 1st, 1942, defendant has employed the above named plaintiffs for various periods of time in the mill or reduction works of the defendant in the production of gold and silver ores and reducing the same to precipitates or bullion for interstate commerce; that during all of said period of time substantially all of such gold and silver ores, precipitates and bullion have [3] been produced for interstate commerce and have been sold, offered for transportation, transported, shipped and delivered in interstate commerce from defendant's mill or reduction works in the County of Churchill, in the State of Nevada, to San Francisco, in the State of California.

#### V.

That during the periods of time that the plaintiffs were employed by the defendant between the second day of January, 1940, and the 1st day of April, 1942, each and all of the plaintiffs rendered services to the defendant as solution men and ball-mill men in the mill or reduction plant of the defendant in Churchill County, Nevada, for a period of eight hours during each and every day that each of the plaintiffs were employed by defendant and during each and every hour for eight hours of each day the plaintiffs were required to give their entire time, knowledge and experience to their work and were

responsible to the defendant for the proper and careful operation of the machinery and equipment, and for the flow, thickening, separation, sampling and other processes of the ore through the said mill or plant and for which the defendant paid to each plaintiff a daily wage for only seven hours for each day and accordingly each plaintiff has given his time and services to defendant for one hour during each day and without any compensation therefor, except as hereinafter explained and modified in paragraph VI; that for each hour that each plaintiff was employed over seven hours per day was in excess of the maximum hours in such work weeks required by Section 7 of the Act; that the employment of plaintiffs for one hour per day in excess of the applicable maximum hours without compensating said plaintiffs for such excess hours at rates not less than one and one-half times the regular rates, at which said plaintiffs were employed was in violation of Section 7 of the Act. [4]

## VI.

That on or about the 22nd day of April, 1941, a controversy arose between the manager for the defendant and the men employed in defendant's mill or plant, relative to a proposed increase of wages for the plaintiffs and others; that it was thereupon agreed that the plaintiffs should get an increase in wages of twenty-five cents per day from and after the 23d day of April, 1941; that thereafter the solution men were paid time and one-half for eleven minutes and the ball-mill men time

and one-half for twelve minutes, amounting to twenty-five cents per day and in addition to their wages for seven hours; that the solution men have not been compensated for 49 minutes and the ball-mill men for 48 minutes for each day plaintiffs were in the employ of the defendant as solution men and ball-mill men from and after said 23d of April, 1941; that said increase in wages did not alter the previous working routine in any way and the plaintiffs continued at their employment for eight hours per day and sixty minutes during each hour and until their employment was terminated.

## VII.

That the plaintiffs above named were employed by the defendant and at various rates of wages per day, but under the same conditions involving a common question of law and fact affecting their several rights and remedies; that inasmuch as the plaintiffs have not kept accurate time of the number of hours worked by them and do not have access to the books of the corporation, that the number of hours and amount of overtime compensation claimed by the plaintiffs are estimated to the best of the plaintiffs knowledge and belief; that the name of each employee, the period of time worked by him, the number of days [5] and the rate of wages per day, the number of hours during each period of time they were employed and the rate of wages per hour, and the total amount of compensation earned by each plaintiff and unpaid by defendant are estimated as follows:

# Summit King Mines

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Name	Periods of time employed	Number of days employed during each period and rate of wages per day	Rate of wages per hour at time & $\frac{1}{2}$	Total
Al C. Fox	Jan. 5, 1940 to June 9, 1940	130 days @ 6.00 a day	1.29	\$167.70
	June 9, 1940 to April 22, 1941	316 days @ 6.35 a day	1.37	432.92
	April 22, 1941 to April 1, 1942	249 days @ 6.35 a day	1.12	278.88
				<hr/> 879.50
Collison Gilbreth	July 24, 1940 to Dec. 2, 1940	112 days @ 5.85 a day	1.25	140.00
	Dec. 3, 1940 to April 22, 1941	121 days @ 6.35 a day	1.37	165.77
	April 22, 1949 to April 1, 1942	40 days @ 1.12 a day	1.12	44.80
				<hr/> 350.57

*Al C. Fox, et al., vs.*

Name	Periods of time employed	Number of days employed during each period and rate of wages per day	Rate of wages per hour at time & $\frac{1}{2}$	Total
R. E. Sutton	Jan. 5, 1940 to June 9, 1940 June 9, 1940 to April 22, 1941	132 days @ 1.29 a day 153 days @ 1.37 a day	1.29 1.37	170.28 209.61 <hr/> 379.89
Orville Hutchins	Jan. 2, 1940 to June 9, 1940 June 9, 1940 to April 22, 1941	129 days @ 6.00 a day 67 days @ 6.35 a day	1.29 1.37	166.41 91.79 <hr/> [6] 258.20
John S. Jones	Oct. 10, 1941 to April 1, 1942	140 days @ 5.85 a day	1.00	140.00
Nephi N. Dustin	June 9, 1940 to April 22, 1941 Apr. 22, 1941 to Apr. 1, 1942	117 days @ 5.85 a day 47 days @ 6.10 a day	1.25 1.00	146.25 47.00 <hr/> 193.25

*Summit King Mines*

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Name	Periods of time employed	Number of days employed during each period and rate of wages per day	Rate of wages per hour at time & $\frac{1}{2}$	Total
Merrill C. Hutchins				
Nov. 4, 1940 to	145 days @ 5.85 a day	1.25	181.25	
Apr. 22, 1941				
Apr. 22, 1941 to	45 days @ 5.85 a day	1.00	45.00	
				226.25
H. M. Childers				
May 17, 1940 to	20 days @ 5.50 a day	1.18	23.60	
June 9, 1940				
June 9, 1940 to	68 days @ 5.85 a day	1.25	85.00	
Apr. 22, 1941	206 days @ 6.35 a day	1.37	282.22	
Apr. 22, 1941 to	47 days @ 6.35 a day	1.12	52.64	
Apr. 1, 1942				443.46
Warren S. Morden				
Jan. 5, 1940 to	130 days @ 5.50 a day	1.18	153.40	
June 9, 1940				
June 9, 1940 to	4 days @ 1.25	1.25	5.00	
Apr. 22, 1941				
				158.40
				[7]

Name	Periods of time employed	Number of days employed during each period and rate of wages per day	Rate of wages per hour at time & $\frac{1}{2}$ day	Total
Edward F. O'Neill	Jan. 5, 1940 to June 9, 1940	131 days @ 6.00 a day	1.29	168.99
	June 9, 1940 to Dec. 29, 1940	175 days @ 6.35 a day	1.37	239.75
				<hr/>
			408.74	
Philip Edgar Ferris	Jan. 5, 1940 to June 9, 1940	143 days @ 5.85 a day	1.25	178.74
	June 9, 1940 to April 22, 1941	66 days @ 6.35 a day	1.37	90.42
	Apr. 22, 1949 to Apr. 1, 1942	220 days @ 6.35 a day	1.12	246.40
				<hr/>
			515.57	
	Grand Total.....			\$3,953.83

That the total estimated amount of unpaid overtime wages and liquidated damages due to each plaintiff are as follows, to wit:

Name	Unpaid Overtime	Liquidated Damages	Total
Al C. Fox .....	\$879.50	\$879.50	\$1,759.00
Collison Gilbreth .....	350.57	350.57	682.14
R. E. Sutton .....	379.89	379.89	759.78
Orville Hutchins .....	258.20	258.20	516.40
John S. Jones .....	140.00	140.00	280.00
Nephi N. Dustin .....	193.25	193.25	386.50
Merrill C. Hutchins.....	226.25	226.25	425.50
H. M. Childers .....	443.46	443.46	886.92
Warren S. Morden .....	158.40	158.40	316.80
Edward F. O'Neill .....	408.74	408.74	817.48
Philip Edgar Ferris .....	515.57	515.57	1,031.14
	<hr/> \$3,953.83	<hr/> \$3,953.83	<hr/> \$7,907.66

[8]

Wherefore, plaintiffs demand that judgment be awarded to each in the sum hereinabove set forth, or such other sum as may be ascertained that each plaintiff is entitled to for unpaid overtime compensation and for an additional equal amount as liquidated damages, together with costs, and that the court allow a reasonable attorney's fee to be paid by the defendant to plaintiff's attorney.

/s/ M. J. SCANLAN,

Attorney for Plaintiffs.

Duly Verified by M. J. Scanlan.

(Receipt of Service.)

[Endorsed]: Filed Oct. 15, 1942. [9]

[Title of District Court and Cause.]

### ANSWER TO COMPLAINT

Now Comes the defendant, Summit King Mines, Limited, a corporation, and answering the Bill of Complaint on file, herein, denies, admits and avers as follows:

#### I.

Defendant denies each and every, all and singular, generally and specifically, the allegations contained in Paragraphs I, II, and V of the Bill of Complaint.

#### II.

Defendant admits the allegations contained in Paragraph III of the Complaint, save and except defendant denies that the mining and milling of gold and silver ores and the reduction of the same to precipitates or bullion within the State of Nevada was for transportation and interstate commerce, and defendant denies that gold or silver ores or minerals mines or produced by defendants, or any other minerals or mineral products mined or processed or reduced by it have been transported in interstate [10] commerce or have been sold or offered for transportation, or transported or shipped or delivered in interstate commerce from any part of the State of Nevada to San Francisco, in the State of California, or any other place outside of the State of Nevada.

#### III.

Answering Paragraph IV of the Bill of Complaint, defendant denies each and every allegation

contained therein except that defendant admits that it has employed the above named plaintiffs for various periods of time in the mill or reduction works of defendant in the reduction of gold and silver ores, and the reduction of the same to precipitates or bullion, but specifically denies that said production or reduction was for interstate commerce.

#### IV.

Answering Paragraph VI of the Bill of Complaint, defendant admits all of the allegations therein contained, save and except that defendant denies all of the allegations contained in said paragraph from lines 9 to 13 inclusive on page 4 of said Complaint.

#### V.

Answering Paragraph VII of the Bill of Complaint, defendant denies each and every allegation therein contained, save and except that defendant admits that the plaintiffs above named were employed by the defendant at various rates or wages per day.

By way of affirmative defenses to the said Bill of Complaint, defendant alleges as follows: [11]

#### I.

That said Bill of Complaint fails to state a claim upon which relief can be granted.

#### II.

That the above entitled Court is without jurisdiction of the subject matter of this action.

Wherefore, defendant prays that plaintiffs take nothing by their complaint and that it recover its costs incurred and to be incurred.

THATCHER and WOODBURN.  
JOHN P. THATCHER,  
Attorneys for Defendant.

(Receipt of Service.)

[Endorsed]: Filed Aug. 24, 1942. [12]

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[Title of District Court and Court.]

#### STIPULATION

It is hereby stipulated and agreed by and between counsel for the respective parties that the plaintiffs may file an Amended Bill of Complaint and that the answer heretofore filed to plaintiff's original Bill of Complaint may be considered as defendant's answer to plaintiff's Amended Bill of Complaint.

Dated this 14th day of October, 1942.

M. J. SCANLAN,  
Attorney for Plaintiffs.  
THATCHER and WOODBURN,  
Attorney for Defendant.

[Endorsed]: Filed Oct. 15, 1942. [13]

[Title of District Court and Cause.]

### STIPULATION

It is hereby stipulated and agreed by counsel for the respective parties that evidence pertaining to the issues involved in this case may be reduced by stipulations following, to wit:

#### I.

It is stipulated that the defendant produced gold and silver ores in Churchill County, Nevada, and that the same were reduced to bullion and transported by United States Mail in interstate commerce from Churchill County, Nevada, to San Francisco, California, and that the bullion was sold to the United States Mint at San Francisco, California.

#### II.

It is stipulated that the computations of the periods of time, number of days, rate of wages per day, was for seven (7) hours and rate of wages per hour was at the rate of seven (7) hours per day with time and one-half for overtime and the total amount of compensation claimed to have been earned and unpaid as stated on pages 5, 6 and 7 of plaintiffs' Amended Bill of Complaint are correct in accordance with plaintiffs' theory of the case and need not be proven. [14]

#### III.

It is also stipulated that the testimony of the plaintiffs not present at the trial would be the same

as the plaintiffs testifying as to the same character of work, mill routine, policy of management, making time and work reports and other evidence of a general nature pertaining to their employment, and that they would also testify as to the number of days they were employed, the rate per day and the rate per hour at time and one-half and the total amount claimed to be unpaid, would be the same as itemized for each plaintiff respectively on pages 5, 6 and 7 of plaintiffs' Amended Bill of Complaint.

Dated this 20th day of October, 1942.

M. J. SCANLAN,

Attorney for Plaintiffs.

THATCHER and WOODBURN,

Attorney for Defendant.

[Endorsed]: Filed Oct. 21, 1942. [15]

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[Title of District Court and Cause.]

## OPINION AND DECISION

Norcross, District Judge.

This is an action brought under the "Fair Labor Standards Act of 1938," Tit. 29 U.S.C.A. #201-219. Plaintiffs were employees of defendant, a Nevada Corporation, in the operation of its mill for the reduction of gold and silver ore, located about thirty miles from Fallon, Nevada. The product of the mill operations is gold and silver bullion which is shipped direct to the United States Mint at San

Francisco. While the mill is classified as one of seventy ton capacity, the average amount of ore treated therein during the time in question was approximately fifty-five tons per day. The mill was operated continuously for twenty-four hours a day. Each work day was divided into three shifts of eight hours each. The mill embraced two classifications designated as ball mill and solution operations. Two men were employed on each shift, one in charge of the ball mill and the other of the solution process, [16] each to aid the other if occasion required. The man in charge of the solution process was, also, in general charge but in case of temporary absence of either, for any cause, the other remained in charge. Seventy-two hours is the time usually consumed from the time the ore enters the mill until the actual values in bullion form are finally recovered.

The mill began operations on January 5, 1940, when the 42-hour week was in effect under the said Fair Labor Standards Act and since has been in operation continuously including all the time herein in question. Prior to the opening of the mill on December 29, 1939, the defendant posted in the mill a notice to mill employees on a daily wage basis to the effect that the men would work 7-hour shifts, relieving each other one hour for lunch. From January 5, to June 11, 1940, the wages of the solution men were \$6.00 per day and of the ball mill men \$5.50 per day for a six day week, at which latter time the wages were increased, respectively, thirty-five cents per day. On October 23, 1940, the forty

(40) hour week went into effect and from that time on defendant paid overtime payments therefor, but the basic wages and seven working hours per shift remained unchanged. On April 23, 1941, a controversy respecting a demand for increase in wages was settled by an agreement entered into between the respective parties by the terms of which the solution men would work 11 minutes more and the ball mill men 12 minutes more per shift, for which overtime would be paid, in an amount approximating \$1.50 per week, such additional work time to be performed during the lunch hour shortening the same, respectively to 49 and 48 minutes. Notice of the same was posted in the mill.

Of the eleven plaintiffs but three were employees at any time during the year 1942; five others were employed during a portion of the year 1941, and all began their employment at various [17] times during the year 1940. Time covered, from date of employment to date of termination thereof, varied from about five months to two years, the average eight hour shift mill time being approximately, one year and four months and of specified working time, seven hours, one year and two months.

The salient portions of the two notices, above referred to as posted in the mill, read as follows:

“Attention Mill Men                   December 29th, 1939.

“The following Rules Will be Observed in the  
Mill.

“1. The Solution Man on shift will be in charge  
of the mill\*\*\*

- “2. Men will work seven hour shifts, relieving each other one hour for lunch.\*\*\* The operator relieving will be responsible for the other operators work as well as his own.\*\*\*
- “3. Time cards will be filled out for each man on shift.\*\*\*
- “4. For all major repair work call the Master Mechanic.
- “5. For any major trouble on the afternoon or night shift call the Mill Superintendent by phone at once.
- “6. \*\*\* 7.\*\*\* 8.\*\*\* 9.\*\*\*
- “10. All wages have been raised 25c per day\*\*\* as at the present time there are no living accomodations at the property.”

“Notice to Mill Employees on  
Daily Wage Basis. April 23, 1941.

“To comply with the agreement reached April 22nd, 1941, whereby overtime arrangements were to be made to enable employees to earn \$1.50 more per week, the following schedule has been worked out:  
“Solution Men:

“Your shift including the lunch period will be 8 hours as it always has but instead of taking one hour for lunch you will take 49 minutes.

“On your time cards mark Daily rate \$6.35 but under time worked put 7 hours plus 11 minutes overtime. This will result in an increase of \$1.50 per week.

“Ball Mill Men:

“Your shift\*\*\*.” Note: same as above for [18] Solution Men with exception of “48 minutes” and “daily rate \$5.85.”

“Men earning \$5.25 per day: \*\*\*. \*\*\*.  
\$5.00 per day. \*\*\*.”

Plaintiffs demand judgment for a total unpaid overtime for labor, so rendered, in the sum of \$3,953.83; liquidated damages in the same amount, as provided by statute, attorneys fees and costs. Such claimed right of recovery is based both on the contention that the said lunch hour, in its entirety, should be included in overtime computation, as a matter of law and that services were actually rendered during that time. These contentions are controverted by defendant and in addition it is alleged: “That the Court is without jurisdiction of the subject matter of this action.”

A stipulation was filed by counsel for the respective parties “that evidence pertaining to the issues involved in this case may be reduced by stipulations following, to wit:

“\*\*\* that the computations of the periods of time, number of days, rate of wages per day, was for seven (7) hours and rate of wages per hour was at the rate of seven (7) hours per day with time and one-half for overtime and the total amount of compensation claimed to have been earned and unpaid as stated on pages 5, 6 and 7 of plaintiff’s Amended Bill of Complaint are correct in accordance with plaintiff’s theory of the case and need not be proven.

"\*\*\*\* that the testimony of plaintiffs not present at the trial would be the same as the plaintiffs testifying as to the same character of work, mill routine, policy of management, making time and work reports and other evidence of a general nature pertaining to their employment, and that they would also testify as to the number of days they were employed, the rate per day and the rate per hour at time and one-half and the total amount claimed to be unpaid be the same as itemized \* \* \* in plaintiffs' Amended Bill of Complaint."

But three of the plaintiffs testified at the hearing. Their testimony mainly related to claimed services customarily performed by them during the so called lunch hour, following completion of [19] luncheon and subject to occasional call for assistance before completion thereof. Testimony to the contrary was offered by the defendant whose witnesses were the manager of the company and mill superintendent. This testimony was to the effect that while not present during all lunch hours, they were frequently so present and never had observed the solution or ball mill men returning to work prior to the termination of their lunch hour; that an occasion for such returning would seldom happen; that when on duty during the hours covered by their shift, the actual time required to perform the ordinary necessary services would not exceed one half thereof, the remaining time requiring no further effort than casual observance. Testimony was also to the effect that other mills of a similar size grade and character

were and could be operated by a one man shift. Time cards were required to be filled out at the end of each shift, none of which disclose a claim for overtime, such as is involved in this action.

The question of overtime allowance for alleged actual service rendered during the lunch period would present the only material question in this case if the same is one within the jurisdiction of this Court, as we view the law as stated by the District Court of Idaho in the case of Sunshine Mining Co. v. Carver, 41 Fed. Supp. 60, to state the law correctly that time off allowed for luncheon is not within time for which any payment can be recovered by an employee unless actual services were necessarily performed during that time for which he would be entitled to recover time and one half for overtime.

Whether operations of a mill for the reduction of gold and silver bearing ore to the form of bullion for transfer to a United States Mint and the subsequent transfer thereto, as required or authorized by laws of the United States, bring such operations within provisions of statutes having their basis in laws relating [20] to Interstate Commerce, presents the controlling question in this case—that of jurisdiction. It is clear that such operations and transfer do not come within the perview of commerce in the sense that it is used in statutes dealing with or affecting Interstate Commerce otherwise than means of conveyance may be used for such purpose. That defendant corporation was not

engaged in Interstate Commerce in the operations of its mill and the transfer of the products thereof and, hence, not subject to the provisions of the Fair Labor Standards, is in accordance with the recent decision of the District Court of South Carolina, Holland, Administrator of the Wage and Hour Division, United States Department of Labor v. Haile Gold Mines, Inc., 44 F. Supp. 641. See, also, T. 31 U.S.C.A. Chapter 8, p. 174 et seq., Cumulative Pocket Part For Use During 1943, #316c, 441, 448, 734, 734a.

It is the conclusion of the Court that the action should be dismissed. It is so ordered.

Dated this 27th day of January, 1943.

FRANK H. NORCROSS,  
District Judge.

[Endorsed]: Filed January 27, 1943. [21]

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[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL OR  
RE-HEARING

Comes Now the complainants in the above entitled cause by Martin J. Scanlan, Esq., their attorney, and move the Court to vacate the opinion and decision heretofore entered dismissing the above entitled action, upon the ground that said opinion and decision conflicts with a controlling decision overlooked by the Court and to which attention had not been drawn through the inadvertence of coun-

sel and which decision was rendered by the United States Circuit Court of Appeals, Eighth Circuit, on June 30, 1942, entitled "Canyon Corporation versus National Labor Relations Board, 128 Fed. Rep. 2nd 953," and which one or more of the principles involved in the above entitled action is contained in the decision of the Circuit Court of Appeals and which the petitioner believes would affect the opinion and decision of the above [22] entitled Court; that the principles announced by the Circuit Court of Appeals, Eighth Circuit, are contained in syllabus 1 and 2 of said decision cited above and reads as follows:

"The production and shipment of gold bullion by a mine and refinery in one state for purpose of selling it to a United States Mint in another state is 'commerce' within the National Labor Relations Act, even though the United States may be the only customer to which bullion can legally be sold." National Labor Relations Act, Sect. 2 (6), 29 U.S.C.A. Sect. 152 (6); Gold Reserve Act of 1934, Sect. 1 et seq., Sect. 3, 31 U.S.C.A. Sect. 440 et seq., Sect. 442.

"Where petitioner in addition to producing gold bullion which it ships from South Dakota and sells to the United States mint at Denver, Colorado, sells and ships slag to a smelting company in Montana, and nearly half of materials and supplies purchased annually are transported to petitioner's plant from outside the state, the National Labor Relations Board properly considered all of those facts together and con-

cluded that petitioner's operations "affected commerce" within the National Labor Relations Act Sect. 2 (6), 29 U.S.C.A. Sect. 152 (6); Gold Reserve Act of 1934, Sect. 1 et seq., Sect. 3, 31 U.S.C.A. Sect. 440 et seq., Sect. 442.

Said motion will be made and based upon Rule 59a, Rules of Civil Procedure for the District Courts of the United States, which embraces therein grounds for re-hearing which were had under Equity Rule 69, 28 U.S.C.A., Section 723, the written opinion and decision of this Court and the record and files of said action.

Dated this 28th day of February, 1943.

M. J. SCANLAN

Attorney for Plaintiffs

### NOTICE OF MOTION

To Thatcher and Woodburn, Attorneys for the Defendant:

Please take notice that the undersigned will bring the above motion on for hearing before this Court at the rooms of the United States District Court in the Postoffice Building in the City of [23] Reno, Nevada, on the 2nd day of February, 1943, at 10 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

M. J. SCANLAN

Attorney for Plaintiffs

(Receipt of Service.)

[Endorsed]: Filed January, 29, 1943. [24]

[Title of District Court and Cause.]

DECISION AND ORDER DENYING MOTION  
FOR NEW TRIAL

Plaintiff's motion for a new trial having been submitted, and the Court being fully advised in the premises, it is the conclusion of the Court that the same should be denied. While the opinion, heretofore filed, was based upon the conclusion that the Court was without jurisdiction, which remains the view of this Court notwithstanding the decision in the case of Canyon Corporation v. National Labor Rel. Board, 128 Fed. (2d) 953, by reason of the fact that the Board had for consideration not only shipments of gold and silver to a United States Mint as part of the results of its milling operations, but also, shipped slag therefrom and sold the same to a smelting company in another state. Although the question of jurisdiction involved in this case has not as yet reached a final decision by the Supreme Court or a controlling decision of this Court been rendered by the Circuit Court of Appeals of this Circuit respecting the question of [25] jurisdiction, it is, also the conclusion of the Court, that, irrespective of the question of jurisdiction, plaintiffs have failed to establish that they performed any substantial amount of labor during the lunch hour over and above that for which they received pay for overtime. The fact that their daily reports made no such claim is a circumstance to be considered together with the conflicting evidence submitted by the respective parties.

It is, therefore, ordered: That the motion for a new trial be, and the same hereby is, denied.

Dated this 25th day of February, 1943.

FRANK H. NORCROSS  
District Judge

[Endorsed]: Filed February 25, 1943. [26]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above entitled cause having come on regularly for trial beginning on the 21st day of October, 1942, and having been tried before this court without a jury, a jury trial having been waived, Martin Scanlan, Esq. appearing as counsel for the plaintiffs and the firm of Thatcher and Woodburn, by John P. Thatcher, Esq. appearing as counsel for the defendant and the Court, after hearing the allegations and proofs of the parties and being fully advised in the premises, now makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

That the controversy between plaintiffs and defendant is one arising under and by virtue of the laws and the statutes of the [27] United States.

## II.

That defendant is a corporation organized and existing under and by virtue of the laws of the State of Nevada and at all times mentioned in the complaint was engaged in the mining of gold and silver ores near the City of Fallon, State of Nevada; that the said gold and silver ores were reduced to precipitates by the cyanide process, the precipitates melted to a dore bullion, the same being a combination of gold and silver bullion; all of said processes of mining and reduction being within the State of Nevada; that said dore bullion was shipped by defendant by United States Mail to the United States Mint at San Francisco, California, and the value of each shipment of bullion was paid by said United States Mint to the said defendant.

## III.

That beginning in the month of January, 1940 and ending on the 1st day of April, 1942 defendant had employed plaintiffs in this action for various periods of time in a mill for the reduction of gold and silver ores operated by defendant.

## IV.

That none of the plaintiffs during his period of employment by defendant was engaged in commerce or in the production of goods for commerce.

## V.

That the said mill of the defendant operated for a period of twenty four hours per day, divided into three shifts of eight hours each; that each of the

plaintiffs performed work, labor and services in said mill for a period of seven hours during the particular shift upon which he was working, and that each of the plaintiffs was free from duty for a period of one hour during [28] each shift for the purpose of eating his lunch; that each of said plaintiffs was paid in full by defendant at the rate of wages established by agreement between plaintiffs and defendant, which wage was in excess of that required by the Fair Labor Standards Act; that each of said plaintiffs was paid overtime at the rate of one and one-half times the amount of the agreed wage for all hours worked in excess of forty two hours a week during the period of employment from January, 1940 to October, 1940; that from October, 1940 to the termination of the employment of each of the plaintiffs each of said plaintiffs was paid overtime at the rate of one and one-half times the agreed wage for all hours worked in excess of forty hours per week.

## VI.

That none of the said plaintiffs made any claim for overtime other than that paid by defendant during the period of his employment by defendant and that none of said plaintiffs made any claim for the payment of overtime until the making of demand upon defendant prior to the filing of the action in the present case, said demand being refused by defendant.

## VII.

That none of the plaintiffs performed any work or labor for defendant during the lunch hour or at any

other time for which he did not receive pay for overtime at one and one half times the agreed wage . . .

### VIII.

That the allegations contained in paragraph IV of the plaintiff's Amended Complaint are not true; that the allegations contained in paragraph V of plaintiffs' Amended Complaint are not true; that the allegations contained in paragraph VII of plaintiffs' Amended Complaint are not true. [29]

As conclusions of law from the foregoing facts, the Court finds:

#### I.

That there has been no violation of Sections 6 or 7 of the Fair Labor Standards Act, being Title 29 U.S.C.A. Sections 206 and 207, by the defendant, Summit King Mines, Limited.

#### II.

That plaintiffs are not entitled to the relief asked for in their Amended Complaint and that defendant is entitled to judgment herein.

#### III.

That defendant is entitled to recover of and from plaintiffs herein its costs herein incurred, taxed in the sum of One Hundred Thirty Seven Dollars and Sixty Eight Cents (\$137.68).

Let Judgment Be Entered Accordingly.

Dated: This 16th day of March, 1943.

FRANK H. NORCROSS

United States District Judge

(Receipt of service.)

[Endorsed]: Lodged March 10, 1943, O. E. Benham, Clerk. By O. F. Pratt, Deputy.

[Endorsed]: Filed March 16, 1943. [30]

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In the District Court of the United States of America, in and for the District of Nevada

No. 232

AL C. FOX, COLLISON GILBRETH, R. E. SUTTON, ORVILLE HUTCHINS, JOHN S. JONES, NEPHI N. DUSTIN, MERRILL C. HUTCHINS, H. M. CHILDERS, WARREN S. NORDEN, EDWARD F. O'NEILL, PHILIP EDGAR FERRIS,

Plaintiffs

vs.

SUMMIT KING MINES, LIMITED,

Defendant

JUDGMENT

The above entitled cause came on regularly for trial beginning on the 21st day of October, 1942 before the above entitled Court, sitting without a jury, a jury trial having been waived, Martin Scanlan, Esq. appearing as counsel for the plaintiffs and the

firm of Thatcher and Woodburn, by John P. Thatcher, Esq. appearing as counsel for the defendant; and the Court, after hearing the allegations and proofs of the parties and being fully advised in the premises and having made its Findings of Fact and Conclusions of Law wherein it finds that plaintiffs are entitled to take nothing by their complaint and defendant is entitled to judgment as hereinafter provided;

Now, Therefore, It Is Ordered, Adjudged and Decreed that plaintiffs take nothing by their complaint and that defendant have and recover from the said plaintiffs the costs of said [31] defendant herein expended, taxed in the sum of One Hundred Thirty Seven Dollars and Sixty Eight Cents (\$137.68).

Dated: This 16th day of March, 1943.

FRANK H. NORCROSS

Judge of the United States  
District Court

(Receipt of service.)

[Endorsed]: Lodged March 10, 1943, O. E. Benham, Clerk. By O. F. Pratt, Deputy.

[Endorsed]: Filed March 16, 1943. [32]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS FOR THE 9TH CIRCUIT,  
UNDER RULE 73 (b)

Notice is hereby given that plaintiffs above named

hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on the 16th day of March, 1943.

MARTIN J. SCANLAN

Attorney for all of the above  
named plaintiffs

308 Lyon Bldg., Reno, Ne-  
vada.

[Endorsed]: Filed May 27th, 1943. [33]

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[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men By These Presents: That we, Al C. Fox and H. M. Childers, as principals, and Commercial Casualty Insurance Company, of Newark, New Jersey, a New Jersey Corporation, as surety, are held and firmly bound unto the Summit King Mines, Limited, a Nevada Corporation, in the sum of Two Hundred Fifty (\$250.00) Dollars, to be paid to the said Summit King Mines, Limited, a corporation, its attorneys, successors, or assigns, to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 25th day of May, 1943.

Whereas, on March 16, 1943, in an action in the District Court of the United States for the District of Nevada, between Al C. Fox, Collison Gilbreth,

R. E. Sutton, Orville Hutchins, John S. Jones, Nephi N. Dustin, Merrill C. Hutchins, H. M. Childers, Warren S. Norden, Edward F. O'Neill, Philip Edgar [34] Ferris, plaintiffs, and the Summit King Mines, Limited, a corporation, defendant, a judgment was rendered against the said plaintiffs and the said plaintiffs have duly filed a notice of appeal from said judgment.

Now, the condition of this obligation is that if said plaintiffs shall prosecute their appeal with effect and pay all costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, then this obligation to be void, otherwise to remain in full force and effect.

AL. C. FOX (Seal)  
H. M. CHILDERS (Seal)  
(Seal) COMMERCIAL CASUALTY  
INSURANCE COMPANY OF  
NEWARK, NEW JERSEY  
By FRANK HASSETT  
Attorney in Fact

State of Nevada  
County of Washoe—ss.

On this 25th day of May, 1943, personally appeared before me, a Notary Public in and for the County of Washoe, Frank Hassett, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Commercial Casualty Insurance Company, of Newark, New Jersey, a New Jersey Corporation, and acknowledged

to me that he subscribed the name of the said Commercial Casualty Insurance Company, thereto as principal, and his own name as attorney in fact, freely and voluntarily and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed my seal at my office in said county and state the day and year in this certificate first above written.

(Notary Seal) M. J. SCANLAN

Notary Public. My Commission expires May 1st, 1947.

[Endorsed]: Filed May 27, 1943. [35]

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[Title of District Court and Cause.]

**ORDER TO TRANSMIT ORIGINAL TRANSCRIPT OF EVIDENCE AND ORIGINAL EXHIBITS TO THE CIRCUIT COURT OF APPEALS**

It appearing to the Court that counsel for the respective parties have stipulated that the original transcript of the evidence filed in this Court together with certain original exhibits in lieu of copies thereof may be transmitted to the Circuit Court of Appeals for inspection by that Court;

It is Ordered that the original transcript of the evidence filed in this Court together with three time cards of each plaintiff, dated approximately three months apart, selected by the clerk at random from

defendant's exhibits E, G, H, I, J, K, L, M, N, O and P, and three solution sheet or work reports for each plaintiff selected by the clerk at random and dated about three months apart from defendant's exhibits C, D, and F be sent to the United States Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof.

Done In Open Court this 23d day of June, 1943.

FRANK H. NORCROSS  
District Judge

[Endorsed]: Filed June 23, 1943. [38]

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[Title of District Court and Cause.]

**MOTION TO EXTEND TIME FOR FILING  
RECORD AND DOCKETING APPEAL**

Appellant shows to the Court as follows:

1. Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit was filed therein on the 27th day of May, 1943.
2. That counsel for the respective parties have made a stipulation designating portions of the record, proceedings, and evidence to be contained in the record on appeal.
3. The Clerk has been unable to complete the preparation of the record on appeal herein and will be unable to complete the same within the period of forty days from the date of filing of such notice of appeal for the reason that counsel for the respec-

tive parties have been unable to prepare the necessary papers for filing in the clerk's office and to give the clerk ample time within which to prepare the record.

Wherefore, appellant moves the Court for an order extending the time within which the record on appeal may be filed and the appeal docketed in the said Court of Appeals until the 25th day of August, 1943.

Dated this 23d day of June, 1943.

MARTIN J. SCANLAN

Attorney for Plaintiffs

[Endorsed]: Filed June 23d, 1943. [39]

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[Title of District Court and Cause.]

**ORDER EXTENDING TIME FOR FILING  
RECORD AND DOCKETING APPEAL**

Upon motion of counsel for the appellant it is the order of the Court that time for filing record and docketing appeal is extended to and including the 25th day of August, 1943.

Dated this 23d day of June, 1943.

FRANK H. NORCROSS

District Judge

[Endorsed]: Filed June 23d, 1943. [40]

[Title of District Court and Cause.]

STIPULATION DESIGNATING PORTIONS  
OF THE RECORD, PROCEEDINGS AND  
EVIDENCE TO BE CONTAINED IN THE  
RECORD ON APPEAL

It is hereby stipulated by and between the parties hereto that the record on appeal herein shall consist of the following items:

I.

Amended Bill of Complaint filed October 15th, 1942.

II.

Answer to Complaint filed August 21st, 1942.

III.

Stipulation to the effect that plaintiffs may file an Amended Bill of Complaint and that the Answer theretofore filed may be considered as the defendant's Answer to plaintiff's Amended Bill of Complaint.

IV.

Stipulation pertaining to the issues of the case and that the evidence of the plaintiffs not present would be substantially the same as the plaintiffs testifying in certain respects, filed October 21, 1942.

[41]

V.

Opinion and decision of the District Judge, filed January 27th, 1943.

## VI.

Motion for new trial or re-hearing, filed January 29th, 1943.

## VII.

Decision and order denying motion for new trial, filed February 25th, 1943.

## VIII.

Findings of Fact and Conclusions of Law, filed March 16th, 1943.

## IX.

Judgment filed March 16th, 1943.

## X.

Notice of Appeal to Circuit Court of Appeals, filed May 27th, 1943.

## XI.

Bond for costs on appeal, filed May 27th, 1943.

## XII.

Original transcript of testimony, filed October 27, 1942.

## XIII.

Defendant's Exhibit A "Notice to Mill Employees on Daily Wage Basis".

## XIV.

Defendant's Exhibit B "Attention to Mill Men".

## XV.

It is further stipulated and agreed that the clerk may select at random from defendant's exhibits E, G, H, I, J, K, L, M, N, O, [42] and P,

three of such time cards for each plaintiff dated approximately three months apart. Also three daily work reports for each plaintiff selected by the clerk at random from defendant's exhibits C, D, and F, dated approximately three months apart and that such original exhibits may be sent to the Circuit Court of Appeals for the Ninth Circuit.

## XVI.

Order to transmit to Circuit Court of Appeals original transcript of evidence, together with certain original exhibits.

## XVII.

Motion to extend time for filing record and docketing appeal.

## XVIII.

Order extending time for filing record and docketing appeal.

## XIX.

This stipulation designating portion of the Record, proceedings and evidence to be contained in the record on appeal.

Dated this 23d day of June, 1943.

MARTIN J. SCANLAN

Lyon Building, Reno, Nevada

Attorney for Complainants

THATCHER AND

WOODBURN

206 N. Virginia Street,

Reno, Nevada

Attorneys for Defendant

[Endorsed]: Filed June 23, 1943. [43]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT  
COURT

United States of America,  
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of Al C. Fox, et al., Plaintiffs, vs. Summit King Mines, Limited, Defendant, said case being No. 232 on the civil docket of said Court.

I further certify that the attached transcript, consisting of 45 typewritten pages numbered from 1 to 45, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein, together with the endorsements of filing thereon, as set forth in the "Stipulation Designating Portions of the Record, Proceedings and Evidence to be contained in the Record on Appeal" filed in said case and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

And I further certify that accompanying this record, in [44] accordance with order of this Court filed and entered June 23, 1943, is the original Transcript of Testimony filed October 27, 1942, and three time cards of each plaintiff, dated approxi-

mately three months apart, taken from Defendant's Exhibits Nos. E, G, H, I, J, K, L, M, N, O and P, and the following daily mill or work reports:

Reports of R. E. Sutton, E. F. O'Neill, Orville Hutchins, and one initialed AF, all taken from Defendant's Exhibit No. C;

Reports of R. E. Sutton, Orville Hutchins, E. F. O'Neill, H. M. Childers, and one initialed AF, all taken from Defendant's Exhibit No. D;

Reports of "AF", R. E. Sutton, H. M. Childers, and E. F. O'Neill, all taken from Defendant's Exhibit No. F.

And I further certify that the cost of preparing and certifying to said record, amounting to \$6.65, has been paid to me by Martin J. Scanlan, Esq., attorney for the appellants herein.

Witness my hand and the seal of said United States District Court this 12th day of August, 1943.

[Seal]

O. E. BENHAM

Clerk, U. S. District Court.

[45]

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[Title of District Court and Cause.]

## TRANSCRIPT OF TESTIMONY

### TRIAL

Be It Remembered, That the above-entitled matter came on for hearing before the Court, sitting without a jury, at Reno, Nevada, on Wednesday, the 21st day of October, 1942, at 1:30 o'clock P. M., Hon. Frank H. Norcross, Judge, presiding.

Appearances:

M. J. Scanlan, Esq.,  
Attorney for Plaintiffs

Thatcher & Woodburn  
By John S. Thatcher, Esq.,  
Attorneys for Defendant.

The Court: Counsel may make a brief statement.

Mr. Scanlan: This is under the wage standard act, in which we allege that the defendant produced ores in Nevada which were reduced to bullion and shipped to San Francisco in the State of California. The principal facts are that we intend to prove that the plaintiffs worked for eight hours' time, rendered services to the defendant corporation at their mill in Churchill County, Nevada, in reducing ores and minerals, and that they were only paid for seven hours' time and that one hour was deducted, which presumably the defendant will contend was for a lunch period, and they were only paid seven hours' shift which was at straight time, but if any overtime was worked, they were paid time and a half, and we are contending that the plaintiffs worked eight hours every day for six days a week and that they are still entitled to one hour overtime at time and a half compensation, and my understanding with counsel is that they are relying wholly upon the facts and we entered into a stipulation, which was filed in this court. This is not very lengthy and probably I had better read it. (Reads)

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\* Page numbering appearing at foot of page of original Reporter's Transcript.

"It is hereby stipulated and agreed by counsel for the respective parties that evidence pertaining to the issues involved in this case may be reduced by stipulations following, to wit:

### I.

"It is stipulated that the defendant produced gold and silver ores in Churchill County, Nevada, and that the same were reduced to bullion and transported by United States Mail in interstate commerce from Churchill County, Nevada, to San Francisco, California, and that the bullion was sold to the United States Mint at San Francisco, California.

### II.

"It is stipulated that the computations of the periods of time, number of days, rate of wages per day, was for seven (7) hours and rate of wages per hour was at the rate of seven (7) hours per day with time and one-half for overtime and the total amount [2] of compensation claimed to have been earned and unpaid as stated on pages 5, 6 and 7 of plaintiffs' Amended Bill of Complaint are correct in accordance with plaintiffs' theory of the case and need not be proven.

### III.

"It is also stipulated that the testimony of the plaintiffs not present at the trial would be the same as the plaintiffs testifying as to the same character of work, mill routine, policy of management, making time and work reports and other evidence of a general nature pertaining to their

employment, and that they would also testify as to the number of days they were employed, the rate per day and the rate per hour at time and one-half and the total amount claimed to be unpaid, would be the same as itemized for each plaintiff respectively on pages 5, 6 and 7 of plaintiff's Amended Bill of Complaint."

I think that states the plaintiffs' case.

Mr. Thatcher: I will make my statement when we open with our evidence.

W. S. Morden, Al C. Fox, H. L. Childers, and John S. Jones were sworn as witnesses for the plaintiffs.

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AL C. FOX,

a witness for the plaintiffs, having been sworn, testified as follows:

Direct Examination

By Mr. Seanlan:

Q. Mr. Fox, state your name for the record. [3]

A. Al C. Fox.

Q. Where do you reside now?

A. Fallon, Nevada.

Q. Have you ever been an employee of the Summit King Mines, Limited, the defendant in this case? A. I have.

Q. When did you commence work for the defendant? A. The 5th of January, 1940.

Q. How long did your employment continue with the defendant corporation?

(Testimony of Al C. Fox.)

- A. Up until the 1st of April, 1942.
- Q. In what capacity were you employed?
- A. I was employed as a relief man in the mill.
- Q. Will you explain what you mean by relief man?
- A. Well, I relieved the mill men on their days off. As they only worked six days a week, I worked for each man on his day off, either on the ball mill or solution.
- Q. When did the mill commence operation?
- A. The 5th of January, 1940.
- Q. Were you then employed? A. Yes.
- Q. How many hours was the mill in operation during the day? A. Twenty-four hours.
- Q. Continuously? A. Yes.
- Q. When did the day shift commence?
- A. Seven in the morning.
- Q. And ended when? [4] .
- A. Three in the afternoon.
- Q. What is the next shift called?
- A. Afternoon shift.
- Q. When did it commence?
- A. Three p. m.
- Q. When did it end? A. At eleven p. m.
- Q. What is the next shift called?
- A. Grave yard shift.
- Q. When did that commence?
- A. At eleven p. m.
- Q. When did it end?
- A. Seven a. m. the next morning.
- Q. In what capacity in the mill were you first

(Testimony of Al C. Fox.)

employed? A. The first shift I worked?

Q. Yes.

A. I relieved the ball mill man on the first shift I worked.

Q. And you were engaged as ball mill man the first day? A. Yes.

Q. How long did you continue as ball mill man?

A. Just one day.

Q. Then what did you do?

A. I relieved the solution man the next day.

Q. How long did you continue with that?

A. Just one day.

Q. Then you changed around, is that it?

A. Then I relieved the ball mill man the next day.

Q. Now then I believe you testified that you discontinued your [5] employment in April, 1942, is that correct? A. Yes, sir.

Q. So you worked as an operating mill man, such as either solution mill man or ball mill man practically during that entire period of time?

A. Yes.

Q. And you are familiar with both capacities of employment? A. Yes.

Q. Will you state briefly the routine for the first hour of the day shift for a ball mill man?

A. Well, on going on shift in the morning, the first thing to do would be to check your tonnage and your classifier overflow gravity or ball mill density gravity and take a sample of classifier overflow for values and also for grind and take a

(Testimony of Al C. Fox.)

mill head sample, add your cyanide, and if lime is being added at the mill, add lime, and part of the time the ball mill man titrated the primary thickener solution for lime and cyanide. That was at the last part of my employment there, the ball mill man titrated the primary solution for lime and cyanide.

Q. Was that the usual routine for the first hour of the day shift?

A. Well, yes. It might vary. One man might weigh his balls for tonnage and do one chore before he did the other, but it just depended on how he was used to doing. There wasn't any set sample to take for the first hour, gravity or weight or anything like that.

Q. How long approximately would that routine take place?

A. Well, during the entire period; that is, outside of a few little changes. If they were adding cyanide, it would depend on [6] what kind of cyanide you were using. If you were using black cyanide and mixing it outside, of course you just attended to the addition of the dissolved cyanide in the mill, and if they were using white cyanide, it was added in the mill.

Q. Were there any other work or services that might develop outside of that routine?

A. Well, if things would go wrong in the mill, such as your power going off or your feed on the belt plugging up from an ore bin, get something in the ball mill scoop, the classifier overflow could

(Testimony of Al C. Fox.)

become plugged and run over on the floor, ball mill could become loaded by the grinding solution going off on the head of the ball mill.

Q. And that character of services which you have described continued during the remainder of the day shift? A. Yes.

Q. For how many hours? A. Eight hours.

Q. That was continuous, was it? A. Yes.

Q. When did you eat on the day shift?

A. Whenever we wanted to.

Q. How would you arrange for that time, by yourself or through any instructions, or what?

A. No, we would just eat whenever we would get hungry, whenever we wanted to eat or whenever you would have time to eat in other words. Whenever was the best time to eat would come, why we would eat.

Q. In other words, there was no fixed time, is that it? [7] A. No fixed time to eat.

Q. How many men were on a shift?

A. Two men on the operation.

Q. Was each man responsible for his own work or otherwise?

A. Well, each man was responsible for his own work, that is, in a way. The solution man was responsible for the operation of the mill, but each man done his own work, unless he needed help from his partner, and then he would call on him.

Q. Was each man relieved for a lunch period?

A. No.

Q. Now, in regard to the afternoon shift, between

(Testimony of Al C. Fox.)

three p. m. and eleven p. m., was the same routine followed? A. Yes.

Q. And the same character of work?

A. Yes.

Q. And is that also your evidence as to the grave yard shift between eleven and seven?

A. I would like to change that. There were some duties in the mill a little different on one shift than another. One shift might add balls to the ball mill and maybe the next shift would clean up the ball mill floor and around the ball mill, and the other shift would do the greasing and oiling, but outside of that the routine duties were the same on each shift.

Q. Were you required to file any reports?

A. Yes.

Q. What were they?

A. It was a mill report sheet.

Q. Of the work mill report? [8] A. Yes.

Q. I call your attention here to an instrument designated "Daily Report Agitating and Thickening, Shift No. 3", and call your attention to the signature down there of the operator, is that yours?

A. Yes.

Q. By initials? A. Yes.

Q. Now does this cover the entire operating period for that day? A. Yes.

Q. For that shift? A. Yes.

Mr. Scanlan: For the record, I would say this is dated March 29, 1940.

Q. This is another one of yours?

A. Yes.

(Testimony of Al C. Fox.)

Q. Dated March 27, 1940. How many periods of time does that cover?

A. You mean the entire?

Q. Yes. A. Eight.

Q. That covers an eight-hour period?

A. Yes.

Q. Did the other one cover eight hours?

A. Yes.

Q. Is this another one? A. Yes.

Q. Dated March 25, 1940? [9]

A. Yes, that is another one.

Q. How many hours does that cover?

A. Eight hours.

Q. These are all solution reports?

A. All solution mill reports.

Q. I call your attention to another report which is designated, "Daily Ball Mill Report" and ask if that is your report? A. Yes.

Q. That is dated June 28, 1941. How many hours did that cover? A. Eight hours.

Q. I call your attention to another report dated June 26, 1941, and ask if that is your report?

A. Yes.

Q. How many hours does that cover?

A. Eight.

Q. I call your attention to another dated June 24, 1941, and ask if that is your report? A. Yes.

Q. How many hours does that cover?

A. Eight.

Mr. Scanlan: Will counsel stipulate that all of

(Testimony of Al C. Fox.)

the remainder of the reports signed by him will be practically the same?

Mr. Thatcher: No, we will not stipulate.

Mr. Scanlan: Do you want to go through the whole bunch?

Mr. Thatcher: No, but I won't stipulate they are the same.

Mr. Scanlan: Well, practically? [10]

Mr. Thatcher: Oh, as to form and type, yes, but I will not stipulate as to the entries.

Mr. Scanlan: Well, the entries wouldn't be the same, but that all his reports would be the same as to the evidence given as he described each type, solution mill and ball mill.

Mr. Thatcher: I will stipulate that all of Mr. Fox's reports on the file sheets would be on the same type of form and would be substantially the same as those.

Mr. Scanlan: I think that would be all right.

Q. Now, did you file any other reports of a different type?

A. No. The solution mill report when I worked on solution.

Q. These are the same as you testified before?

A. Yes.

Q. About the ball mill reports? A. Yes.

Q. You filed one according to the job which you happened to be working on for that shift, is that correct? A. Yes.

Q. Were there any other reports required to be filed by the men? A. No.

(Testimony of Al C. Fox.)

Q. Who kept the time?

A. I didn't understand what you said.

Q. Who kept the time, the time that you worked?

A. Do you mean who made out the time cards?

Q. Well, yes.

A. I would make out the time cards.

Q. I call your attention to these things designated "Surface Time Card", the first one of which is January 5, 1940, is that [11] yours?

A. Yes.

Q. How many hours were they put in for?

A. Seven hours.

Q. I call your attention to another time card made July 8, 1940, is that yours? A. Yes.

Q. How many hours does that call for?

A. Seven hours.

Q. I call your attention to this report card dated March 3, 1941, and ask if that is your card?

A. Yes.

Q. How many hours is that put in for?

A. Seven hours.

Q. I call your attention to this card dated September 24, 1941, and ask if that is your card?

A. Yes.

Q. For how many hours is that put in?

A. Seven—seven hours and eleven minutes.

Mr. Scanlan: Do you stipulate all these report cards cover the same each date they are supposed to cover?

Mr. Thatcher: I will stipulate they are the cards filled out by Mr. Fox personally from the beginning

(Testimony of Al C. Fox.)

of his employment to the end for each and every day.

Mr. Scanlan: That they are substantially the same?

Mr. Thatcher: No, not substantially the same. The time shown is different. Sometimes there is overtime shown on those cards in addition to the regular working hours, sometimes it [12] appears as a change in the working hours, after April 23, 1941, so they can't be the same.

Mr. Scanlan: You will stipulate they are the time reports kept by the company?

Mr. Thatcher: No, these time cards were made out by the men individually and were turned in.

Mr. Scanlan: And for the time reported?

Mr. Thatcher: Yes.

Mr. Scanlan: And that the evidence pertaining to all of them would be the same, with the exception perhaps of some one would have time and a half for overtime and others not?

Mr. Thatcher: I would stipulate this, that these cards correctly show the hours stated by the men to have been worked.

Mr. Scanlan: Just stated by the men?

Mr. Thatcher: Stated by the men to have been worked during that period.

Q. Now, Mr. Fox, will you explain the discrepancy between your work report cards of eight hours and your time card for seven hours?

A. Well, the time cards, we were notified to make them out for seven hours.

(Testimony of Al C. Fox.)

Q. And who notified you?

A. Well, the management.

Q. And was that followed generally throughout the entire period of your employment?

A. Yes.

Q. From the commencement until the end?

A. Yes, unless you worked two or three hours overtime or until [13] *until* eleven minutes was added on overtime, and then it was made out for seven hours and eleven minutes.

Q. When did that period commence that you mention, about the eleven minutes?

A. I can't say exactly. It was, I would say, along in the summer time of 1941.

Q. And how did that arise?

A. The men asked for a raise in pay. In fact, the miners all went out, walked out of the mine, and a committee was named, one mill man and two miners, to meet with Mr. Dobson to settle the question and it was settled by paying for eleven minutes at time and a half, eleven minutes for a solution man and twelve minutes for a ball mill man, which time and a half was approximately 25 cents, so this eleven minutes was added on to the seven hours.

Q. Did that make any difference in the working time of yourself and the other plaintiffs in the mill? A. No.

Q. Did it make any difference in the routine of the mill work for eight hours? A. No.

Q. Did it make any difference in the time which you took for lunch? A. No.

(Testimony of Al C. Fox.)

Q. Was there ever any time, during the course of your employment, where you were able to take an hour away from your work? A. No.

Q. Was there any time, during the course of your employment, that you were able to take 45 minutes away from your work? [14]

A. Not and do justice to your work.

Q. Was there any time, during the course of your employment, that you were able to take a half hour away from your attention to your work while in the employ of the company?

A. Well, I would say not.

Q. Was there any time that you could take any time away from attention to your work?

A. No, you had to have your mind on the mill all the time.

Q. Where did you eat your lunch generally?

A. Most of the time in the mill.

Q. And that was in close proximity to your work, wasn't it?

A. Yes, it was, you might say, in the middle of it.

Q. Did that interfere with your mill work in any way? A. Eating lunch?

Q. Yes.

A. Well, at times something would come up that would have to be attended to and you would quit, if you were eating lunch, you would quit eating lunch and go and attend to whatever it was.

Q. Was it possible for you to be parked any distance from the mill during any period of the eight-hour shift and give your attention to the mill?

(Testimony of Al C. Fox.)

A. No.

Q. Was your attention to your work services continuous during the entire eight-hour period?

A. It was, from the time you come on shift and relieve the other shift ahead of you, you were responsible for your work in the mill for the full eight hours.

Q. How many men were employed on the afternoon and night shifts? [15]

A. Two on each shift on the operation.

Q. Did you work with the other plaintiffs who are not present here today?

A. Yes, I worked with all of them.

Q. Was their routine of work and practice regarding eating lunch the same as yours?

A. Yes.

Mr. Scanlan: You may cross-examine.

#### Cross Examination

By Mr. Thatcher:

Q. Mr. Fox, have you worked in any other mills other than the Summit King? A. One other.

Q. Where? A. Midas, Nevada.

Q. What was the capacity of the mill?

A. Practically the same as this, about 75 ton.

Q. How many men were employed in the mill?

A. Two on a shift.

Q. For three shifts a day?

A. Three shifts a day.

Q. What is the capacity of this mill at the Summit King? A. I believe it is 70 tons.

Q. I believe you testified that you spent only

(Testimony of Al C. Fox.)

one day as a ball man and the rest of your time of employment as a solution man, is that correct?

A. No. This is what I meant, that I worked relief. There were two men on a shift, which would make six men operating, and I was the seventh, and as they only worked six days a week, I worked [16] for each man in rotation through the different shifts six days, thereby working for them as they had their day off. So, in other words, what I meant to say was on the first shift I went to work in the mill I relieved the ball mill man and the next shift I relieved the solution man, and that way all through until I worked for all six, and then I took my day off.

Q. What are the duties of the solution man?

A. To operate the solution end of the mill, take samples, do the titration, weigh the pulp, weigh the pumps for gravity and the agitators for gravity, take care of the Diesels, take care of the precipitation, see that the solution in the tanks is kept the right levels.

Q. What do you mean by take care of the Diesels?

A. Have to watch the switch board and see the Diesel was turned up the right revolutions to hold the average.

Q. You did no repair work? A. No.

Q. You had no part in the maintenance?

A. No.

Q. You did nothing more than watch the switch board?

A. Watch it and if anything went wrong correct it.

(Testimony of Al C. Fox.)

Q. You testified, I believe, you had to make report on the report sheet as to your duties, is that correct? A. Yes.

Q. How often were those reports required to be made?

A. Well, at the start the reports were made every two or three hours, when the mill started, and when Hr. Hunt was in charge of the mill, I don't believe there was any record noted only two or three or four times a shift. [17]

Q. About how much time did you consume in getting the data necessary to make one report?

A. Well, it probably would take about 30 minutes.

Q. How many reports a day did you make?

A. Of sheets do you mean?

Q. Of reports?

A. There was a record kept of about three or four but the samples and weights were all taken maybe more than eight times a day.

Q. Weren't you required to enter on the sheet the samples and weights when taken?

A. Not every hour on the start of the mill.

Q. How about after the mill started?

A. When Mr. Clawson took charge of the mill, why about that time we started keeping a record of the weights and overflow and titrations about every hour, I believe, about the time he took charge of the mill. And even at that, they might have been taken more than that, because if we changed the pump or something, we might check it two or

(Testimony of Al C. Fox.)

three times or once or twice in between, regarding the weight, to see that we got it right and rectify it if we hadn't.

Q. You spoke of certain difficulties which you might meet in the mill in the course of the day, what were those difficulties?

A. Well, the zinc feed would quit. You mean outside regular routine duties?

Q. Yes.

A. Well, well, the precipitation pump could kick off.

Q. How often did the precipitation pump ever kick off?

A. Well, sometimes three or four times a shift. When you get [18] the belt too heavy, the automatic switch would kick the precipitation pump off. The zinc feed, we had a lot of trouble on the start of the mill and always had to be watching because it fed into a cone and an emulsifier dried the zinc fed into this cone and mixed with the barren solution and that would fill up in the cone and plug up the feed end of the press.

Q. How much time did you actually consume in making the reports?

A. You mean just the writing?

Q. No, I mean in making the report?

A. In taking the samples and all?

Q. Yes.

A. I would say on an average of 30 minutes and look the mill all over and see that everything was all right.

(Testimony of Al C. Fox.)

Q. And you took about four of those a day?

A. We made a record of about four, but lots of times there were eight or ten taken and maybe more than that.

Q. Who prepared the time cards, Mr. Fox?

A. Who made them out?

Q. Yes. A. The man that signed them.

Q. You mean the men themselves, each one, prepared his own time card? A. Yes.

Q. When you first went to work at the mill, what was the rate of pay?

A. Six dollars for the solution men and \$5.50 for the ball mill men.

Q. And that was for a seven-hour shift? [19]

A. It was marked seven hours on the card.

Q. On the time card? A. Yes.

Q. How long did that rate of pay continue?

A. I believe it was up until the 22nd of April in 1940.

Q. Could it have been about June 12, 1940?

A. Well, I couldn't say for sure.

Q. What was done on or about that time you testified the change?

A. At that time there wasn't any transportation out there and the men were driving just two men in a car, so we appointed a committee of two to meet with Mr. Dobson to see if we could get a raise in pay to offset our driving 32 miles to work.

Q. Did you secure that raise in pay?

A. Yes.

Q. About how much?

(Testimony of Al C. Fox.)

A. Thirty-five cents.

Q. At that time did you make any complaint to Mr. Dobson about working eight hours and being paid for only seven hours? A. No.

Q. Did any of the men make any complaint that you know of? A. No.

Q. How long did those wages continue with 35 cents increase?

A. Up until the summer of 1941 that we spoke of.

Q. That would be about April, 1941, when you had that dispute?

A. Sometime along in the summer.

Q. What was the character of that dispute at that time?

A. Well, we wanted a raise in pay.

Q. Did you see the management about securing a raise in pay? [20] A. The committee did.

Q. Whom did that committee represent?

A. Miners and mill workers.

Q. Was it appointed by all the miners and mill workers?

A. The mill men appointed their representative and the miners, I imagine, appointed theirs.

Q. Did they secure the raise in pay?

A. Yes. Well, I wouldn't say it was a raise in pay. It was more money.

Q. You testified that was accomplished by changing the time—the men put on their time cards seven hours and eleven minutes for the solution men and seven hours and twelve minutes for the ball mill

(Testimony of Al C. Fox.)

men and the company paid overtime for the eleven and twelve minutes?

A. Yes. The pay remained the same, but we were paid 25 cents more a day.

Q. At that time were you notified there was any reduction in the lunch hour?

A. Well, yes, we were notified that we were to take 48 and 49 minutes off the customary hour.

Q. You were notified that you were to take 48 or 49 minutes off?

A. Well, we were notified that we were to add the 11 and 12 minutes that we had been docked out of the hour at time and a half, which made a quarter.

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Q. At that time did you ever make any complaint to the management of the mine that you were being paid only seven hours' time for eight hours' work? A. I didn't make any complaint, no.

[21]

Q. Did any of the plaintiffs make any complaint? A. Not that I know of.

Q. Did any of the men at that time make any demand for overtime for that extra hour?

A. No.

Q. As I understand it, Mr. Fox, this wage rate payable after April 23, 1941, was the result of the agreement between the mine operators and the employees, is that correct?

A. Well, I guess it is.

Q. Was your attention ever called to any no-

(Testimony of Al C. Fox.)

tice posted by the management about April 23, 1941, in respect to lunch hours?

A. There were notices posted, yes.

Q. Where were those notices posted?

A. I believe in the change room and mill.

Q. Were they posted anywhere else?

A. I couldn't say. It might have been poisted in the hoist.

Q. I hand you what purports to be a copy of notice to mill employees on daily wage basis, dated April 23, 1941, and ask you if that is the notice to which you refer? A. Yes.

Mr. Thatcher: I would like to offer this in evidence.

Mr. Scanlan: No objection.

The Court: It may be admitted.

Clerk: Defendant's A.

Mr. Thatcher: I would like to read this into the record, Defendant's A in evidence: (Reads)

“Notice to Mill Employees on  
Daily Wage Basis

“To comply with the agreement reached April 22nd, [22] 1941 whereby overtime arrangements were to be made to enable employees to earn \$1.50 more per week, the following schedule has been worked out:

Solution men:

Your shift including the lunch period will be 8 hours as it always has but instead of taking one hour for lunch you will take 49 minutes.

On your time cards mark Daily rate \$6.35 but

(Testimony of Al C. Fox.)

under time worked put 7 hours plus 11 minutes overtime. This will result in an increase of \$1.50 per week.

#### Ball Mill Men:

Your shift including the lunch hour will be 8 hours as it always has but instead of taking one hour for lunch you will take 48 minutes.

On your time card, mark daily rate \$5.85, time worked 7 hours plus 12 minutes overtime. This will result in your earning \$1.50 more per week.

#### Men Earning \$5.25 Per Day:

Shift including lunch period will be 8 hours as it now is but instead of taking an hour for lunch take 47 minutes for lunch.

Mark your time card, Rate of Pay, \$5.25. Time worked 7 hours and 13 minutes overtime. This will result in an increase of \$1.50 per week.

#### Men Earning \$5.00 Per Day

Shift including lunch period will be 8 hours as in the past but instead of taking 1 hour for lunch take 46 minutes.

Mark your time card, Daily rate \$5.00, time worked 7 hours plus 14 minutes overtime. This overtime will amount to an increase of \$1.50 per week."

That is dated April 23, 1941.

Q. Mr. Fox, do you recall any other notice about April 23, 1941, relating to instructions for making out time cards? A. No, I can't recall.

Q. You don't recall whether such a notice was posted in the mill or not? [23]

(Testimony of Al C. Fox.)

A. I couldn't say.

Q. It might have been posted there?

A. It could have been, yes. There were lots of things tacked up there.

Q. As a matter of fact, the employees didn't pay much attention to them?

A. I wouldn't say that, no.

Q. And this might have been posted and overlooked?

A. It might have been there, but as I say, I couldn't recollect.

Q. I believe you testified you began your employment with the defendant corporation January 5, 1940?

A. I started working in the mill January 5, 1940.

Q. Do you recall notice dated December 29, 1939, and entitled, "Attention Mill Men. The Following Rules Will Be Observed In The Mill"?

A. If I could see it—

Q. I hand you what purports to be that notice and ask you if you can identify it? A. Yes.

Q. Was that posted in the mill?

A. Yes, on the office wall.

Q. Do you know how long it was posted there?

A. I couldn't say how long it was there, but I see it there quite a while. I will say a year anyway.

Q. It was there when you began working?

A. Yes, I will say it was there when I began work.

Mr. Thatcher: I should like to offer this.

Mr. Scanlan: No objection. [24]

(Testimony of Al C. Fox.)

The Court: It may be admitted.

Clerk: Defendant's B.

Mr. Thatcher: I should like to read this into the record please. Referring to Defendant's Exhibit B in evidence, this reads as follows: (Reads)

"Attention Mill men December 29th, 1939

The Following Rules Will Be Observed in the Mill:—

1. The solution man on shift will be in charge of the mill and will be responsible for same.

2. Men will work seven hours shifts, relieving each other one hour for lunch. For example; the ball mill operator will relieve the solution man from 11:00 to 12:00 and the solution man will relieve the ball mill man from 12:00 to 1:00. The operator relieving will be responsible for the other operator's work as well as his own. This applies except in the case of emergency, when other relieving hours can be arranged.

3. Time cards will be filled out for each man on shift and signed by the solution man. He will then turn them into the mill office.

4. For all major repair work call the Master Mechanic.

5. For any major trouble on the afternoon or night shift call the Mill Superintendent by phone at once.

6. The crusher man, before he starts crushing, will check over all motors and machinery for grease and oil. Any adjustments to be made will be made by the Master Mechanic. Report them to him.

(Testimony of Al C. Fox.)

7. Solution man will be responsible for the delivery of all samples to the Assay Office.

8. Each solution man will have two density cans. These are to be used for densities only. Glass flasks will be used to take samples for titrations. Take care of these cans.

9. Keep the mill and machinery clean.

10. All wages have been raised 25c a day by order of the General Manager as at the present time, there are no living accommodations at the property."

Q. Mr. Fox, did you eat your lunch every day while you were em- [25] ployed by the defendant?

A. Yes.

Q. What did your lunch usually consist of?

A. Oh, generally about three sandwiches, or three slices of bread I would say, made into sandwiches, and maybe a piece of cake or piece of pie and some fruit, that would be all.

Q. Where did you generally eat your lunch?

A. I generally ate my lunch right in the mill.

Q. What part of the mill?

A. Around the office on the titrating floor or inside of the office.

Q. About how long did you spend eating it?

A. I would say an average of about 15 minutes.

Q. Was that true of all shifts, Mr. Fox, that you worked?

A. As near as I know, yes. In fact, as I said, I worked with them all and it was just about the same, everybody took about the same time for

(Testimony of Al C. Fox.)

lunch. They didn't all eat in the office. Maybe some fellow would prefer to sit on a bench outside and eat his lunch or go over and sit down on the steps to the ball mill, or wherever they took a notion.

Q. Were you permitted to smoke in the mill?

A. Yes.

Q. After lunch would you have a smoke?

A. Sometimes. I would get up and go about my business and smoke.

Q. You always went about your business after eating your lunch? A. Certainly.

Q. In other words, it is your testimony that your routine was that you sat down, had your lunch, spent exactly 15 minutes—— [26]

A. No, I wouldn't say exactly 15 minutes, because I didn't time myself.

Q. What is the most time you might have spent on it?

A. Well, eating my lunch I would say 15 minutes, maybe ten—I would say from ten to twenty.

Q. So that your testimony would be that you spent twenty minutes at the most every day?

A. No.

Q. You might spend more?

A. No. I said it might be between ten and twenty minutes; I wouldn't state the exact time because I never timed myself.

Q. But at the most you never spent more than twenty minutes? A. I couldn't say that.

Q. You might have spent twenty-five?

(Testimony of Al C. Fox.)

A. I might have and might not have.

Q. You might have spent thirty? A. No.

Q. Never thirty minutes? A. No.

Q. Then we can say that at no time did you ever spend more than thirty minutes eating your lunch?

A. I never spent more than thirty minutes eating lunch—I said twenty-five, I believe.

Q. Would your testimony be, Mr. Fox, every day you were employed not more than thirty minutes after you began to eat your lunch you went back to your duties on the mill? A. Yes.

Q. And that was for each and every day you were so employed? [27]

A. Yes. There is something I would like to say so far as that goes.

Mr. Thatcher: Certainly, Mr. Fox.

Witness: While I was eating my lunch I was on duty I figured, because I was watching everything that was in sight and hearing of me while I was eating my lunch.

Q. You were watching everything in your sight and hearing? A. Yes.

Q. Mr. Fox, didn't you have rigged up near the office in the mill a little light which would turn red when anything went off in the mill?

A. I didn't have it rigged up.

Q. There was one there?

A. There was one there that operated more or less, I would say, for a while. I don't know how long.

(Testimony of Al C. Fox.)

Q. What was the purpose of that light?

A. That was to notify the ball mill man when his feed went off.

Q. As a matter of fact, the ball mill man did a good deal of reading on the office, did he not?

A. I don't think so.

Q. Did you ever see the ball mill man reading in there?

A. Well, I have seen everybody read, as far as that goes—maybe look in the catalog there or look back through the mill records to see what somebody else had been doing.

Q. Wasn't there a nice large collection of western stories magazines in the office?

A. No, there wasn't in the office.

Q. Where were they? [28]

A. Well, I couldn't say because I don't read Western Stories magazine.

Q. Did you see them around?

A. I seen one or two around there, yes.

Q. As a matter of fact, the men often read magazines on the job?

A. No, I wouldn't say that.

Q. You never saw them?

A. I would say that maybe somebody did read a magazine, but your question to me was did I often see them reading magazines. No.

Q. But you did occasionally?

A. Well, there was one or two who would read magazines once in a while, yes, but as a general rule the men didn't read magazines.

(Testimony of Al C. Fox.)

Q. Mr. Fox, after you had eaten your lunch, did you ever take five here and there during the day?

A. Just what do you mean by taking five?

Q. Well, it is an old mining term, meaning take a little rest.

A. Well, as I said, part of your work was circulating around to see that everything was operating all right, it wasn't actually working with your hands and you might say you were taking or you might be taking 15 minutes to go around the mill at times in addition to taking your samples, to see that the pumps were all operating and your solution levels were at their proper level in the solution bank and checking on things that could go wrong.

Q. Mr. Fox, wasn't it understood any time a man sat down and opened his lunch box, whether or not he had finished his lunch at any previous time, he was free from any duties?

Mr. Scanlan: Do you understand the question?

A. I don't exactly understand the question. Do you mean if a [29] man grabbed his lunch box and sat down any time during shift he was supposed to be eating his lunch?

Q. I mean was he subject to any duties at that time?

A. When he had his lunch box open?

Q. Yes. A. Yes.

Q. If a man sat down with his lunch box open, would the mill superintendent require him to do any work around there?

(Testimony of Al C. Fox.)

A. I have been called from my lunch to help start the compressor, different things in the mill.

Q. Would that occur very often?

A. I wouldn't say very often—a number of times.

Q. In case of breakdown in the mill, whose job was it to repair th breakdown?

A. The master mechanic.

Q. It wasn't the routine of the mill man?

A. No. He was supposed to report any breakdown that occurred.

Q. Mr. Fox, I call your attention to a document which purports to be the solution sheets for the month of March, 1940, of the defendant company's mill. Turning to the date March 29, 1940, Shift 3, I ask if that is your report? A. Yes.

Q. That was signed by you? A. Yes.

Q. Turning also to March 27, 1940, I hand you what purports to be a daily solution report and ask you if you can identify that?

A. Yes, that is mine.

Q. That is your signature? [30]

A. Yes, that is correct.

Q. Turning to March 25, 1940, I hand you what purports to be a daily solution report and ask you if you can identify that? A. That is mine.

Q. That is signed by you? A. Yes.

Q. Turning to what purports to be a daily solution report marked March 20, 1940, I ask you if you can identify that? A. That is mine.

(Testimony of Al C. Fox.)

Q. And one marked March 18, 1940, I ask you if you can identify that? A. Yes.

Q. And March 15, 1940?

A. That is mine too.

Q. That is signed by you? A. Yes.

Q. And this is the report of your activities during that day, as far as they were required to be written? A. Yes.

Q. And March 13, 1940?

A. That is mine.

Q. And March 11, 1940? A. Yes.

Q. That is signed by you also? A. Yes.

Q. And March 6, 1940? A. Yes.

Q. And March 4, 1940? [31] A. Yes.

Mr. Thatcher: I should like to offer this Solution Sheet Report for the month of March 31, 1940, in evidence with respect to all of the sheets therein contained and the signature of Al C. Fox, the witness.

Mr. Scanlan: No objection.

The Court: It may be admitted.

Clerk: Defendant's C.

Q. Mr. Fox, would you say that those solution sheet reports and the number of entries on those would be just about the same for each month of your employment as a solution man?

A. The entries on the sheets?

Q. Yes. A. No.

Q. Would there be more or less entries on there?

A. There would be more.

Q. When would there start to be more?

(Testimony of Al C. Fox.)

A. About the time Mr. Clawson took charge of the mill.

Q. And when was that?

A. Well, I would say along in July of 1940, or along about July.

Q. You would say July, 1940? A. Yes.

Q. Referring to solution sheet reports for the month of July, 1940, and referring to one dated July 31, 1940, I ask you if that is yours?

A. Yes.

Q. Referring to one dated July 29, 1940, I ask you if that is yours? [32] A. Yes.

Q. Referring to one marked July 26, 1940, ask you if that is yours? A. Yes.

Q. And July 24, 1940, ask you if that is yours?

A. Yes.

Q. And July 15, 1940, that is your report?

A. Yes.

Q. And July 5, 1940, ask you if that is yours?

A. Yes.

Q. And July 3, 1940, ask you if that is yours?

A. Yes.

Q. And July 1, 1940, and ask if that is yours?

A. Yes.

Mr. Thatcher: I would like to offer this in evidence.

Mr. Scanlan: No objection.

The Court: It may be admitted.

Clerk: Defendant's D.

The Court: We will take our usual recess for 10 minutes.

(Recess taken at 2:40 P. M.)

2:50 P. M.

MR. FOX

resumed the witness stand on further cross-examination by Mr. Thatcher.

Mr. Thatcher: Under our stipulation, Mr. Scanlan stipulated that these time cards were made out by Mr. Fox and that they date from the beginning to the end of his employment. We should like to offer these in evidence. [33]

Mr. Scanlan: No objection.

The Court: They may be admitted.

Clerk: Defendant's E.

Q. Mr. Fox, I believe you testified that there were times you were interrupted in your lunch, something going wrong with the mill?

A. Yes.

Q. How often did that occur?

A. I would say probably three times a week.

Q. What were the nature of these interruptions, breakdowns in the mill?

A. Well, I wouldn't say it was breakdowns. Maybe, to give an example, maybe the agitator overflow pump would be bothering or something, and maybe the bin would be bothering, quitting, or not carrying the load that was coming into the sump, and you would have to watch it for a few minutes, and maybe I would quit my lunch and walk down the catwalk to see if that was all right. That is just an example.

Q. Were you required to make a report on your

(Testimony of Al C. Fox.)

report sheets as to breakdowns or anything going wrong with the mill in the operations?

A. Anything of a serious nature, yes. It might be the pump had been bucking for two or three days. It was a known fact, probably, that it wasn't working good or something was wrong with it.

Q. But you were required to make a report on your report sheets as to—

A. The one who found it, yes, the trouble. [34]

Q. And you say you were interrupted about two or three times a week?

A. Yes, an average of two or three days.

Q. Turning to Defendant's Exhibit D in evidence for the month of July, 1940, July 29, 1940, I believe you testified that was your report? A. Yes.

Q. Do you find anything wrong there, anything went wrong with the mill on that day?

A. Yes. We had to go down for the slimes in the primary thickener.

Q. What time did that take place?

A. Well, 7:30 A. M. to 8:50 and 12:40 P. M. to 1:10 we were down.

Q. Would that have interrupted your lunch hour, Mr. Fox?

A. It might have because we ate lunch any time we wanted to. I might have been eating at that time.

Q. I turn to July 26, 1940, and ask you if you find anything there?

A. Yes, undoubtedly the mill was broke down when I went on shift, according to that report.

(Testimony of Al C. Fox.)

Q. Did you have anything to do with reporting it?

A. No, there wasn't any reporting to do. You see we had slimes in the primary thickener.

Q. Would that have interrupted your lunch hour or given you time off?

A. No, not given me time off because I am pretty busy when I go on shift and the same coming on grave yard; you have about an hour and a half or two hours' work, where you have to keep working all the time, take up your samples and dry and filter and titrate your solution and so forth and so on. [35]

Q. All of which is reported on your sheets?

A. No, that is what has to be done every shift.

Q. And that is reported on your report sheets?

A. No, I wouldn't report when I took samples. The foreman always took care of the samples.

Q. Now, taking July 24, 1940, which I believe you identified as your report, do you find anything in there that would interrupt your lunch?

A. Well, went down at 4:00 p. m. to 5:00 p. m.

Q. Well, do you have to repair it if it went down? A. No, down for slimes again.

Q. That would mean you were free that hour?

A. No, not necessarily. The rest of the mill was going. These were solution sheets and I was on solution and the ball mill man, his end of the mill was down.

Q. So that wouldn't interfere with your lunch at that time? A. No.

(Testimony of Al C. Fox.)

Q. Turn to July 17, 1940, do you find anything there? A. Yes.

Q. What is that?

A. Outside bearing on press pump running hot.

Q. Would that interfere with your lunch?

A. It could, yes, if I was eating my lunch and I was watching this every few minutes to see that it didn't get too hot, it would naturally interfere with my lunch, because probably I would be eating my lunch and go down in the middle of my lunch or cut my lunch short in order to take care of it.

Q. Turning to July 15, 1940, do you find anything there? [36]

A. Yes, we were having trouble there.

Q. Would that interfere with your lunch?

A. It would just depend if I was eating lunch at that time.

Q. Turning to July 5th, do you find anything there?

A. There isn't—yes, there is too. Well, that isn't any trouble. It was probably an order to report that or the shift before or two may have been having trouble and when it cleared up I made a note of it.

Q. There was nothing there to interfere with your lunch?

A. Not in that notation there, no.

Q. Turning to July 3, 1940.

A. Well, the pump went out on the agitator, sump pump.

Q. Did you repair that?

A. Yes, I had a fellow that had been working

(Testimony of Al C. Fox.)

as a mill mechanic in the mill working with me on the ball mill and at that time Mr. Clawson was living 32 miles from the mill—he was the mill superintendent at that time—and so to keep from shutting the mill down until we could call him up, we went up in the warehouse and got a new case and put in the pump.

Q. Referring to July 1, 1940, do you find anything there? A. No.

Q. Who was the mill superintendent when you first went to work at the mill?

A. A man by the name of Mr. Sage.

Q. Was he on duty all three shifts?

A. I believe he was out there all the time as long as he was there. He might have gone to town once. He was there when the mill started. [37]

Q. Was he in the mill on all three shifts?

A. Yes, unless he had gone into town. I think he was out there most of the time starting the mill.

Q. He spent all three shifts in the mill?

A. Well, I couldn't say because I only worked on one shift in the mill.

Q. Was he around the mill all the time during your shift, whatever shift it might be?

A. He was only there two months after it started.

Q. Who was the superintendent after Mr. Sage?

A. Mr. Hunt.

Q. Was Mr. Hunt in the mill during all three shifts? A. No.

Q. On what shift was he there?

(Testimony of Al C. Fox.)

A. Day shift.

Q. Was there any one superior to the mill man during the afternoon and night shifts?

A. Not when Mr. Hunt was there.

Q. Who was the superintendent after Mr. Hunt?

A. Mr. Clawson.

Q. Was Mr. Clawson there during all three shifts?

A. After a time he was. At the start he lived in town; until they built him a residence out at the mill, he stayed in town and after they got his house finished he moved out to the mill.

Q. I mean was he actually in the mill during all three shifts? A. No.

Q. During what shift was he there?

A. Day shift. [38]

Q. He was not there in the mill during the afternoon or night shift?

A. Not unless he was called out or had to stay to do something.

Q. As far as these reports made on the solution sheets or on the ball sheets, was there any specific time at which they must be entered?

A. At that time there wasn't. There for quite a while we were supposed to make three or four records during the shift, recordings on the sheet. That is, I believe the ball mill made all the time, but the solution man was only required, those weights and titrations and whatever was taken, about three or four times a shift.

Q. What kind of a mill is that?

(Testimony of Al C. Fox.)

A. It is cyanide.

Q. Describe to the court what the general operation of that mill is, general type of operation.

A. The ore is brought into the mill and ground, into a ball mill, in a cyanide solution, and cyanide acts on the values in the ore after it is ground and dissolves the values into a solution, and then they are run through the mill and the pulp is washed and rewashed quite a number of times, until all the values are taken out of the pulp that can be taken out, and then the solution is mixed with zinc dust and run through a press and precipitated and the precipitates are taken out every so often and melted into bullion.

Q. So none of this operation, from the time the ore enters the mill until the time it is smelted into bullion, requires any amount of work on the part of the mill operator? [39]

A. Yes, it does.

Q. What is that?

A. Well, taking these samples——

Q. I am referring to the process itself.

A. You mean the mechanical process?

Q. Yes.

A. Cyanide has to be added and lime to hold the cyanide and alkalinity of the solution at a certain point, at whatever is decided is best to get extraction out of that particular ore, and you figure taking samples and weighing these cravities and greasing and oiling and all that pertains to helping the mechanical process along.

(Testimony of Al C. Fox.)

Q. But as far as the work of the conversion of the ore into bullion, the entire matter is handled by machinery, other than the addition of cyanide and determination of proper solution?

A. No, the press has to be cleaned by hand. Well, I guess mechanically, as far as that goes, the cyanide does the work, but the machinery has to be taken care of and the operation of the mill as it goes along, or the cyanide won't take the values out of the ore.

Q. Then as I understand the job of the mill man, he is a watcher and caretaker, isn't that so, of the machinery in there? A. No.

Q. What other duties has he in addition?

A. Has to take these samples and titrate and clean the mill, add fuel oil to the fuel oil tanks down at the Diesel engines and adjust the pumps. There are any number of things that have to be done. If they weren't done for a certain length of time [40] the mill would be haywire, your tails would go up and your heads down, in other words.

Q. How long could that mill run without any active part being taken by the mill man?

A. It might run 15 minutes one day and it might run eight hours.

Q. Would you say after running 15 minutes there was going to be a breakdown?

A. There certainly could be. The Diesel engines could go off.

Q. Do you have anything to do with the Diesel engines other than filling with fuel oil?

(Testimony of Al C. Fox.)

A. Have to check the feed and speed of the engines, yes.

Q. It is no part of your duty to care for the engines themselves?

A. No, not mechanically. The master mechanic takes care of them.

Q. You say your duty as mill man was to keep your mind constantly on the mill without interruption for eight hours?

A. I wouldn't say every second of time, like looking for a bomb to go off or something like that but you had to be on the job all the time because if some things went wrong in there, it would cause three or four hours' work or a loss in values or various things.

Q. As I understand it, Mr. Fox, there were two men on every shift in the mill? A. Yes.

Q. These men alternated as ball and solution men?

A. No, they were straight ball mill men or straight solution men.

Q. I understand from your testimony that you alternated? [41]

A. I alternated on their days off.

Q. No other man did so?

A. No, for the two years and three months I was there, I held the same job down.

Q. Do you know whether any other of the plaintiffs in this action alternated in their duties?

A. No, only some of them went to work in the ball mill as ball mill men and as vacancies occurred

(Testimony of Al C. Fox.)

they were moved up on solution because it was a little better job, more money.

Q. So as a matter of fact, all the men were equally acquainted with the duties of both jobs?

A. No, absolutely not.

Q. Your testimony is then that this mill required the constant attention of each man, two men in the mill, for eight hours during the day?

A. We will say because he was responsible for the work and if you let anything get away from you that was your hard luck.

Q. Was it ever possible for one man to take an hour out and the other man watch the mill?

A. There was quite a turn-over of men there in the mill and I can say there was nearly half I worked with called ball mill men were green men when they came into the mill and knew nothing about solution. They were broke in on the ball mill and some of them worked up to solution in time.

Q. As a matter of fact, most of these plaintiffs worked there for some period of time, did they not, Mr. Fox? A. Yes.

Q. After they were broken in, is it still your testimony one [42] man couldn't take an hour off?

A. Most ball mill men run the ball mill and never shown anything about solution until they work up to it and they have to be broke in.

Q. And it is your testimony also then that all of these men, all of these plaintiffs, spent a continuous eight hours watching those mills every day of their employment?

(Testimony of Al C. Fox.)

A. They were in the mill for eight hours, yes. They were taking care of the mill for eight hours.

Q. But you don't know whether or not they were actually performing mill duties?

A. Well, they weren't working like they would with a pick and shovel, continuously for eight hours, no.

Mr. Thatcher: That is all, Mr. Fox.

Redirect Examination

By Mr. Scanlan:

Q. Mr. Fox, is it customary for an experienced mill man to do all his work with his hands?

A. No, it isn't.

Q. How much mill work can a man look after or attend to without using his hands?

A. Why, I would say 50 per cent of his work is watching and knowledge, knowing when something is wrong.

Q. And keeping things from going wrong?

A. Yes.

Q. You said that every man was not acquainted with the other man's work on the same shift, that was your testimony, was it? A. Yes.

Q. And about how many of these men who are working in the mill [43] as operators would you say were inexperienced men?

A. You mean operating on the ball mill?

Q. Yes.

A. I would say the men I worked with, 50 per cent of them were inexperienced when they come in the mill.

(Testimony of Al C. Fox.)

Q. Would it be possible for the other experienced solution man to take time off and go away from his work for any length of time?

A. Well, no, it wouldn't.

Q. These report sheets which counsel showed to you, do those report sheets cover all titrations and samples that were taken during the course of a shift? A. No, they don't.

Q. Why not?

A. Well, the recordings that show on those sheets are what was required on the sheet at that time, but in order to hold a certain gravity on a pulp, you might have to weigh the pulp, if you made a change, you might have to weigh that every 15 or 20 minutes or so to see when you had gained the point you were after.

Q. Was it required to be recorded on the report sheet?

A. The change that had been made?

Q. Yes.

A. After Mr. Clawson was in charge it was.

Q. What change was made in the practice after Mr. Clawson took charge?

A. Well, there were more recordings made on the mill record.

Q. Than previously? A. Yes. [44]

Q. Is there considerable difference in recording of the work done the early part of the operation of the mill than what was done during the latter part? A. Yes, there was.

Q. And in what way?

(Testimony of Al C. Fox.)

A. Well, in the early part of the operation of the mill you wouldn't have to take as many tests, we will say, on the tray thickener as we had to take in the latter part of the operation of the mill, and I believe the weight, the gravities of the agitators was changed, the time for taking them, the number of times for recording them, and I believe at one time the mill sheet was changed, the layout of the mill sheet was changed. I think to start out with we had things on there that wasn't used and it was rearranged to get the records that were wanted.

Q. The forms? A. Yes.

Q. Counsel called your attention to a notice dated December 29, 1939, which is marked Defendant's Exhibit B. I call your attention to the first part of that notice, which reads: "The solution man on shift will be in charge of the mill and will be responsible for same." Was that rule observed all the way through?

A. The solution man was held responsible for the operation of the mill, his own work, and the ball mill man's work.

Q. "2. Men will work seven hour shifts, relieving each other one hour for lunch. For example; the ball mill operator will relieve the solution man from 11:00 to 12:00 and the solution man will relieve the ball mill man from 12:00 to 1:00. The operator relieving will be responsible for the other operator's work as [45] well as his own. This applies except in case of emergency, when other re-

(Testimony of Al C. Fox.)

lieving hours can be arranged." Was that instruction followed out? A. No.

Q. In what way was it not?

A. Well, there wasn't anybody to relieve anybody else and nobody took the hour to start in with. For a couple of weeks, two or three weeks or so, in starting the mill, I don't think anybody had time to take an hour if they wanted to and after that it was never observed.

"3. Time cards will be filled out for each man on shift and signed by the solution man. He will then turn them into the mill office." Was that instruction observed by the mill men?

A. It was for a while, yes.

Q. Was it all the time? A. No.

Q. Was the failure of the mill man to observe these instructions known to the mill superintendent and to the management?

A. Well, they certainly were, they should have been. The cards have never been turned into the office.

Q. Was your attention ever called by the mill superintendent or the management to these rules?

A. To observe these rules?

Q. Yes.

A. No, only in that first one, where the solution man was responsible for the operation of the mill while he was on shift.

Q. But the relieving part of it wasn't observed by any one? A. No. [46]

(Testimony of Al C. Fox.)

Q. I also call your attention to paper entitled, "Notice to Mill Employees on Daily Wage Basis," dated April 23, 1941, and marked Defendant's Exhibit A. Were you in the employ of the defendant company on April 23, 1941? A. Yes.

Q. And were you working as a solution man around about that date?

A. Was I on solution that day?

Q. No, not that day, on or about that time?

A. Yes.

Q. And also as a ball mill man? A. Yes.

Q. I call your attention to the instructions: "Solution Men: Your shift including the lunch period will be 8 hours as it always has but instead of taking one hour for lunch you will take 49 minutes." Had you been taking an hour for lunch prior to April 23, 1941? A. No.

Q. Did this arrangement, noticed on April 23, 1941, bring about any change in the lunch period after that date? A. No.

Q. Again, "On your time cards mark Daily rate \$6.35 but under time worked put 7 hours plus 11 minutes overtime. This will result in an increase of \$1.50 per week." Did the rate of wages change at that time?

A. The day's pay didn't change. We got, as it says there, approximately \$1.50 more a week, or 25 cents a day.

Q. Was that why you put 7 hours on your time card? A. Seven hours and 11 minutes. [47]

Q. And eleven minutes. A. Yes.

(Testimony of Al C. Fox.)

Q. And what had you been putting in there previously? A. Seven hours.

Q. Was that also under instructions or under the practice of the mill?

A. It was under instructions.

Q. I again call your attention to statement: "Ball Mill Men: Your shift including the lunch hour will be 8 hours as it always has but instead of taking one hour for lunch you will take 48 minutes." Did that instruction make any difference in the practice of the work period in the mill?

A. No.

Q. Either prior to April 23, 1941 or after April 23, 1941? A. No.

Q. There was no difference? A. No.

Q. It says: "On your time card, mark daily rate \$5.85, time worked 7 hours plus 12 minutes overtime. This will result in your earning \$1.50 more per week." Did that make any difference other than the increase in wages?

A. No, it didn't make any difference, only we got \$1.50 more a week.

Q. It didn't make any difference in the working time? A. No.

Q. Now, again, "Men Earning \$5.25 Per Day: Shift including lunch period will be 8 hours as it now is but instead of taking an hour for lunch take 47 minutes for lunch." Did that instruction make [48] any difference after April 23, 1941?

A. No.

(Testimony of Al C. Fox.)

Mr. Thatcher: That has nothing to do with mill men, Mr. Scanlan.

Q. Did you ever work as a mill man under this \$5.85?

A. No, I got paid solution pay.

Q. Did the superintendent of the mill, or the management of the corporation, ever insist upon these instructions being followed by the men?

A. Only as far as filling out the time card.

Q. Otherwise they were not observed?

A. No. Of course, we got that extra money.

Mr. Scanlan: I believe that is all.

#### Re-Cross Examination

By Mr. Thatcher:

Q. Mr. Fox, did any member of the management of the defendant company tell you, or that you know of tell anyone else, that he could not take an hour for lunch?

A. No, it was never mentioned one way or the other.

Q. After April 23, 1941, did any employee of the Summit King Mines, or any officer or other person tell you, or any other man that you know of that, that he couldn't take 48 or 49 minutes?

A. No, all that was required was that we put that down on the time card as it instructed us to do.

Q. If you did sit down to lunch, were you at any time ever called to duty by the superintendent?

A. Yes.

Q. How many times?

(Testimony of Al C. Fox.)

A. That is hard to say. It is pretty near two years. Oh, I [49] couldn't state how many times. I have been called several times though while I was eating my lunch.

Q. That would have been on the morning shift?

A. Either the morning or afternoon.

Q. Were you ever called on the night shift?

A. Not the graveyard. No one was very seldom there on grave yard shift.

Q. Did Mr. Clauson ever call you to duty any time you sat down with your lunch box open?

A. Yes.

Q. On how many occasions?

A. That I stated I can't say, on several occasions.

Q. Do you recall a conversation with Mr. Clawson on March 30, 1942, the day you left the employ of the defendants, in the mill, to the effect that Mr. Clawson had never caught you any time loafing on the job with your lunch box open?

A. I don't recall that, no.

Q. You might have had that conversation?

A. No, I would say I didn't.

Q. Do you ever recall telling Mr. Clawson it would be hard for him to determine how much time the men took, as long as they had their lunch box open he didn't dare bother them?

A. No, I never said that, absolutely not.

Mr. Thatcher: That is all.

Mr. Seanlan: That is all.

MR. H. M. CHILDERS,

a witness on behalf of plaintiffs, having been sworn, testified as follows:

Direct Examination

By Mr. Scanlan [50]

Q. Will you state your name?

A. H. M. Childers.

Q. Where do you reside, Mr. Childers?

A. Fallon.

Q. Have you ever been employed by Summit King Mines, Limited? A. Yes.

Q. A corporation? A. Yes.

Q. When did your employment commence in that corporation? A. In May, 1940.

Q. How long did it continue?

A. Until April, 1941.

Q. In what capacity were you employed?

A. Well, I went to work originally out there as a ball mill man and I worked there, I can't state just the length of time, then I was promoted to solution man.

Q. How many years have you worked at mill work, such as the Summit King Mines mill?

A. I couldn't give the exact time limit, but I started in the mines and mills in 1916.

Q. Would you say about how many mills known as cyanide mills that you have worked in?

A. Well, roughly speaking, I should say around thirty.

Q. What is the custom with men employed in mills, in respect to doing their work or rendering

(Testimony of H. M. Childers.)

services in a mill, insofar as applying their time is concerned? A. I don't quite understand.

Q. Well, I will reframe the question. What was the general [51] custom amongst mill men in working in a mill, as to whether or not they work with their hands all the time or done work with their minds?

A. Well, it was approximately 50-50. You work part of the time with yours hands and part of the time it is your knowledge that makes a mill run satisfactorily?

Q. And that is a part of a mill man's work, to keep the mill running so that is is not necessary to use your hands?

A. That is it, yes sir.

Q. What is the custom of mill men generally as to having a lunch period within which to eat their lunch?

A. Well, different mills vary on that. Most mills pay from the time you go into the mill until the time you come out and some mills, like the last one I worked for, which is the Desert Silver, they sent a man into the mill to relieve you and you went out of the mill and he assumed responsibility and signed the work sheet the same as you did during that hour.

Q. During your period of employment at the Summit King Mines mill were you ever relieved by another man in order to have time to eat?

A. Yes.

Q. How often?

A. Once a shift.

(Testimony of H. M. Childers.)

Q. I think you did not understand the question. Read the question.

(Question read.)

A. What do you mean by another man?

Q. Another man would come in and take your place? [52] A. Yes.

Q. Frequently?

A. For the mill was every shift I worked. We had an hour for lunch and he relieved us.

Q. That was during the afternoon and grave yard shifts? A. During every shift.

Q. Another man relieved you? A. Yes.

Q. Who generally relieved you?

A. Why it was a man that ran the crusher and he relieved all three of us. He worked three hours in the mill, one hour on day shift and one hour in the afternoon and one hour on grave yard, or two hours, relieved first the ball man and then the solution man, so that we each had a relief for one hour.

Q. Where did you go during the hour?

A. I had a house and went home and ate my meal and stayed the hour.

Q. Did that continue during the entire time of your employment?

A. Well, no, it didn't. When we first went up there we didn't have relief so we complained to the management about it and they immediately put this man on to relieve us.

Q. About when was that, do you know?

A. I couldn't state.

(Testimony of H. M. Childers.)

Q. Was it in the early part of your employment or middle?

A. The latter part of my employment.

Mr. Thatcher: This is all the Desert Silver.

Mr. Scanlan: Well, we are mixed up. I asked you about the Summit King. [53]

Witness: Oh, I misunderstood you. That was on the Desert Silver.

Q. I direct your attention now to the period of your employment with the Summit King Mines mill in Churchill County. Were you ever relieved there while in the employ of the company by another man? A. No.

Q. Did you ever take an hour off for lunch during the time of your employment with the Summit King Mines? A. No.

Q. Did you ever take three-quarters of an hour off? A. No.

Q. Or half an hour? A. No.

Q. Or did you ever take less than that away from your work? A. No.

Q. How many hours a day did you work?

A. Eight hours. There was no different hours; the same as in there.

Q. And you changed shifts, worked on all three shifts? A. Yes.

Q. Did you take part in any conference between the representatives of the men and the management of that company at any time?

A. Yes.

Q. About when was that, approximately?

(Testimony of H. M. Childers.)

A. That was in April, as I remember. It was before they changed that to seven hours and eleven minutes.

Q. April of what year? [54] A. 1941.

Q. And what was the purpose of that conference?

A. We asked for more money.

Q. And did you obtain results?

A. We got more money but they changed that lunch period from one hour, cut it down, was the only results, and paid us time and a half for that 11 minutes, and changed it from an hour to 48 minutes.

Q. Did it make any difference of time than just prior to that? A. Not a bit.

Q. Or afterwards? A. No.

Q. Whom did you represent?

A. The mill men.

Q. What was it, a committee?

A. So they had a meeting, the men met in the park at Fallon, the miners and mill men, and they talked back and forth and finally decided the best thing to do was to appoint a committee to meet with Mr. Dobson to see if they couldn't settle and they gave us power to settle any way we could and I was appointed the man to represent the mill.

Q. At that conference was there anything mentioned about a seven-hour day or seven-hour shift?

A. Yes.

Q. What was it?

(Testimony of H. M. Childers.)

A. I mentioned the fact that we were working out there eight hours.

Q. And to whom? [55] A. Mr. Dobson.

Q. What was his reply, if any?

A. I can't remember the exact reply, but as I remember it, he gave me a lot of figures on how the mill wasn't making any money and that they would have to shut down if they had to pay the raise.

Q. Was there anything said at that time about fair wages standard act?

A. Yes; I can't recollect what it was.

Q. Can you recollect the substance?

A. No, I can't.

Q. Was any change made in your time report after that?

A. On the time card, yes.

Q. Was that a change or no change?

A. It was a change?

Q. In what way?

A. We made our time cards for seven hours and eleven minutes.

Q. That was after April 23, 1941?

A. Yes.

Q. Did it make any difference in the working time? A. Not a bit.

Q. Let me ask you again, when did you go to work for the defendant corporation?

A. In May, 1940.

Q. I call your attention to this paper, which reads, "Attention Mill Men," dated December 29, 1939, and which is Defendant's Exhibit B, and ask

(Testimony of H. M. Childers.)

you to look that over. Are you familiar with that paper? [56] A. Yes.

Q. Where did you see it?

A. I have seen it tacked on the wall in the mill.

Q. I call your attention to the first portion of that: "The following rules will be observed in the mill: 1. The solution man on shift will be in charge of the mill and will be responsible for same." Was that instruction followed out? A. Yes.

Q. And "2. Men will work seven hour shifts, relieving each other one hour for lunch. For example; the ball mill operator will relieve the solution man from 11:00 to 12:00 and the solution man will relieve the ball mill man from 12:00 to 1:00. The operator relieving will be responsible for the other operator's work as well as his own. This applies except in case of emergency, when other relieving hours can be arranged." Was that instruction followed out? A. No.

Q. In what respect was it not?

A. Nobody relieved me at any time.

Q. Was there a man relieved the other men working in the mill as operators?

A. I couldn't tell only on my shift.

Q. But you were never relieved during the entire course of your employment? A. No.

Q: "3. Time cards will be filled out for each man on shift and signed by the solution man. He will then turn them into the mill office." Was that rule observed? [57]

A. It was part of the time. When I first be-

(Testimony of H. M. Childers.)

came solution man I used to sign the cards, then it got so nobdy signed them, none of the solution men signed them, so I didn't either.

Q. I call your attention to rule 7: "Solution man will be responsible for the delivery of all samples to the Assay Office," was that rule observed?

A. Yes.

Q. I call your attention to this paper entitled, "Notice to Mill Employees on Daily Wage Basis," dated April 23, 1941, and which is Defendant's Exhibit A. A. Yes.

Q. You have seen this before, have you?

A. Yes.

Q. I believe you testified that you worked as a solution man and also as a ball mill man, is that correct? A. Yes.

Q. I call your attention to instructions to "Solution Men: Your shift including the lunch period will be 8 hours as it always has but instead of taking one hour for lunch you will take 49 minutes." Was that observed? A. No.

Q. In what respect was it not observed?

A. We simply worked the eight hours, the same as we always did.

Q. And also "On your time cards mark daily rate \$6.35 but under time worked put 7 hours plus 11 minutes overtime. This will result in an increase of \$1.50 per week." Was that observed?

A. Yes.

Q. Instruction to "Ball Mill Men: Your shift including the [58] lunch hour will be 8 hours as it

(Testimony of H. M. Childers.)

always had but instead of taking one hour for lunch you will take 48 minutes." Was that observed?

A. I wasn't the ball mill man there, but the ball mill man didn't observe that on my shift.

Q: "On your time card, mark daily rate \$5.85, time worked 7 hours plus 12 minutes overtime. This will result in your earning \$1.50 more per week." Was that observed?

A. Yes, that was observed.

Q. Did the 11 minutes for the solution men and the 12 minutes for the ball mill men make any difference in the period of a man's employment during any hour of the shift? A. No.

Q. Was it the same before April 23, 1941, as it was after April 23, 1941? A. Yes.

Q. When you went to work in the mill there, how did you make your time card out as to the number of hours?

A. I marked seven hours.

Q. Why? A. That was my instructions.

Q. From whom?

A. From the solution man I worked with. When I went to work in the mill I worked in with a man by the name of O'Neill. He gave me the rules I had to observe and one of them was to mark seven hours on my time card.

Q. Was that regardless of the number of hours you worked?

A. No, if I worked more than eight-hour shift, then I put down [59] overtime.

(Testimony of H. M. Childers.)

Q. But if you worked an 8-hour shift, what did you mark on your time card?

A. I marked 8-hour shift.

Q. Did you ever work less than eight hours during any shift. A. No.

Q. Did you work all three shifts; that is, you changed shifts, the same as the others?

A. Yes.

Q. Will you give a brief outline of the routine work for the first hour of the day shift?

A. For the ball mill or solution?

Q. Ball mill man shift.

A. Well, the first thing he did was to get his weight from the front end of the classifier; then he ran around to the back end of the mill and took a weight of the ore and also—well, he measured his belt, and took the weight of the ore and he added his cyanide and lime, checked up on the titrations for the solution and took two samples on the front of the mill, one for the grind and the solution that he turned over to the solution man.

Q. How much time would that take, approximately?

A. Oh, from 20 minutes to a half hour.

Q. And what would you be doing for the balance of the hour?

A. I would be staying close to the mill watching that it ran all right, or when I took my first tests, if they didn't suit me just right, I might check back on them two or three times during the hour.

(Testimony of H. M. Childers.)

Q. Was that the practice followed during the remaining seven [60] hours of the day shift?

A. It was, yes.

Q. Now, on the other shifts, was there any material difference in routine of work?

A. Only that one shift—there were three different jobs there, washing the floor and putting in the balls, and I don't remember what the other job was, but had it divided up so one shift put in the balls and one swept out and the other shift did something else—greased up.

Q. Were you kept busy during those shifts?

A. Well, not busy with your hands. You stood there and watched the feed. There was considerable trouble with the feed stopping once in a while, sticks and rocks coming down the feed, and he stood there where he could see that feed.

Q. Briefly describe the routine of the first hour of the day shift on solution.

A. On solution you had three agitators to check the densities and you had your primary thickener to check, the cyanide and lime and check it on your agitators also. You have a five-tray thickener which had to be checked and each tray for height of your slimes in the tray; had three cocks on each tray. Then you had a zinc feeder that *you* to open or fill with zinc, which was fed by hand, and it fed off on a belt and that had to be filled, so you check that first thing, then you check your Diesel for speed and for fuel oil, and that was about practically all.

Q. About how long would that take?

(Testimony of H. M. Childers.)

A. Around a half hour.

Q. What would you be doing the remainder of that time? [61]

A. Well, simply—the mill, the way it is situated, there was more than one floor, so we used to be able to walk up on the cat walk and look down on the other floor and we would usually walk back on that floor and in that way we could cover the whole mill and we would do that for maybe 15 or 20 minutes and maybe make a trip or two down to the other floor to look at it.

Q. Was that practically the same course followed the remaining seven hours of the shift?

A. On the day shift and afternoon it was. On the grave yard shift we had to take care of the samples. The samples that had been saved for 24 hours had to be dried and taken up to the assay office and that required approximately an hour and a half to filter them and dry them and take them to the assay office.

Q. Did you ever have any definite period off for lunch on any shift. A. No.

Q. How did you eat your lunch?

A. Well, I usually had it where I could see most of the mill.

Q. How much time would you take?

A. Well, I never times myself; I couldn't tell you just exactly. It doesn't take me very long to eat.

Q. Were you ever interrupted from eating your lunch. A. Yes.

(Testimony of H. M. Childers.)

Q. How often would you say?

A. Several times. I couldn't tell the number of times.

Q. Was it a practice for one man to relieve the other man in the operation of a shift?

A. No. [62]

Q. Could that be done conveniently and satisfactorily? A. No.

Q. Why?

A. Well, the ball mill men that they had at Summit King, most of them were inexperienced men and they weren't capable of running the solutions in the mill and the instructions said that the solution man was responsible for the mill at all times, and I don't know how the other fellows felt, but I didn't fell like turning responsibility over to somebody that was getting less money than I was during any time of the shift.

Mr. Scanlan: You may cross-examine.

#### Cross-Examination

By Mr. Thatcher:

Q. Mr. Childres, you testified you were employed at the mill of the Desert Silver in Nivloc?

A. Yes, sir.

Q. How long were you employed there?

A. I couldn't give you the exact time, 8 or 9 months.

Q. How many men were working in the mill at Nivloc? A. You mean operating?

Q. Yes, per shift. A. Two men.

(Testimony of H. M. Childers.)

Q. What was the capacity of that mill?

A. One hundred seventy-five tone.

Q. What is the capacity of the mill at Summit King. A. Seventy ton.

Q. In other words, the mill at Desert Silver was twice as large as the one at Summit King?

A. Yes. [63]

Q. You testified also it was the practice there for the crusher man to relieve the mill men for the lunch hour? A. Yes.

Q. Did he relieve both at the same time?

A. No.

Q. One at a time? A. Yes.

Q. Was the crusher man an experienced mill man? A. Yes.

Q. He was? A. Yes.

Q. He was an experienced solution man?

A. Yes.

Q. And he had had mill experience before?

A. Yes.

Q. In every instance? A. Yes.

Q. You had no hesitancy, when you were solution man at Nivloc, in having the crusher man relieve you?

A. Not a bit, because he took responsibility. He had to sign the ticket the same as I did.

Q. The mill didn't suffer any breakdown?

A. Not to my knowledge.

Q. At the time you were solution man, Mr. Childers, you were in charge of the shift, were you not?

A. Yes.

(Testimony of H. M. Childers.)

Q. And being in charge of the shift, you had power to tell the ball mill man what to do? [64]

A. Yes.

Q. You testified also that these ball mill men were inexperienced. For how long a period did they remain inexperienced after coming on the job?

A. As long as they are there, if they handle the ball mill without going around to see the rest of the mill, they could be there indefinitely.

Q. Isn't it a fact that the ball mill man was the solution man's helper? A. Yes.

Q. Doesn't he assist him in his work?

A. If he needs assistance he does.

Q. Isn't he familiar with his work?

A. No, not the technical end of it, no.

Q. You testified also that it was your practice during all of your employment to test the two or three agitators in the mill every morning the first hour on shift? A. How was that?

Q. There were three agitators in the mill, were there not? A. Yes.

Q. I believe you testified you ran tests from all three of the agitators?

A. I might have made a mistake there. I believe it was No. 1 and No. 3.

Q. Isn't it a fact after Mr. Clawson became superintendent he stopped all tests on No. 2 and 3 agitators?

A. He might have for a while, but I know I was taking them when I left, as far as I can remember.

(Testimony of H. M. Childers.)

Q. Mr. Childers, where did you eat lunch?

A. Well, there was a little stairway there just inside the mill that you could look over and get a picture of the mill and I used to sit on that stairway some of the time. Some of the time I ate it in that little office, wherever handiest; sometimes I sat in the window.

Q. How long after your shift began was it your custom to eat your lunch?

A. Whenever I got hungry.

Q. You didn't eat it any special time?

A. No.

Q. It might be one hour after shift began or two hours? A. Yes.

Q. About what did you usually have for lunch?

A. Usually a couple of sandwiches and pie or fruit.

Q. You ate all that?

A. Yes. Sometimes I took home a sandwich.

Q. About how much time did you spend eating your lunch?

A. I couldn't say, I never timed myself, but I don't usually take long to eat at any meal. Probably 10 or 15 minutes.

Q. Could you have spent more than 15 minutes?

A. Not eating, no.

Q. What would you be doing the time you were not eating? A. Watching the mill.

Q. So your testimony would be then that you never spent more than 15 minutes in the consumption of your lunch at any time? A. Yes.

(Testimony of H. M. Childers.)

Q. Was there a change house connected with this mill? [66] A. Yes.

Q. Where was it?

A. Oh, it set up on the hill about, I don't know, 50 or 75 yards from the mill.

Q. Was it used by the men for the purpose of changing clothes when they came on and after shift?

A. Some of them.

Q. Did you use it? A. Part of the time.

Q. Isn't it a fact you usually went up there to change about half an hour before shift ended every day? A. Some of the time.

Q. You did that when you were solution man?

A. Yes.

Q. And you left the ball mill man in charge?

A. Well, I never took half an hour, no.

Q. Didn't you feel a little hesitancy in leaving that ball mill man in charge, Mr. Childers, being your responsibility? A. Yes, I did.

Q. And yet you did it very often, did you not?

A. No, not so often.

Q. You did it practically every day, didn't you?

A. No. I changed in the mill for quite some time.

Q. Most of the time you used the change house?

A. Well, about the year I stayed out there I might have used the change house one-third of the time.

Q. And the running of the mill didn't bother you a bit during that time? [67]

A. Yes, it did.

(Testimony of H. M. Childers.)

Q. You were worried about it but you left the ball mill man in charge?

A. That is one reason I started changing clothes back in the mill.

Q. You were hired by Mr. Clawson?

A. Yes.

Q. Did Mr. Clawson ever tell you when he hired you that he expected you to alternate your lunch hours with the other men on the shift?

A. Not to my recollection.

Q. Did you ever see that notice of December 29, 1939? A. I did.

Q. Where was it posted?

A. The one by Mr. Sage?

Q. Yes.

A. It was posted right in the mill on the board in the office.

Q. You made out your own time cards, Mr. Childers? A. Yes.

Q. Made out in your own handwriting?

A. Yes sir.

Q. While you were working as solution man, did you fill in the reports on the solution sheets?

A. Yes.

Q. Was there any rule of the mill as to how often they should be filled in?

A. Well, there were various rules. They changed rules seevral times out there. [68]

Q. What were the first rules, when you first went into their employment?

(Testimony of H. M. Childers.)

A. I couldn't tell you. I don't remember whether four or five during the shift we had to make report. We were supposed to do this work, but were not required to report only so many times during the shift.

Q. At first it was four or five times during the shift? A. I believe so.

Q. It was changed later?

A. Yes, when I left there we had to fill it out every hour.

Q. That would mean that you had to take an agitator test or two and classifier overflow every hour?

A. Yes, I think so. I wasn't on the ball mill when I left there so I couldn't say for sure about that.

Q. I mean on the classifier overflow you were required to take a test on that overflow?

A. That was the ball mill man's side.

Q. How about the agitator? A. Yes.

Q. You were required to take that every hour?

A. Yes.

Q. Did you do so every hour?

A. Yes. I might have missed once or twice.

Q. Just once or twice?

A. Well, a few times. I can't say how many.

Q. Well, about how many times?

A. I couldn't say. It wasn't many.

Q. About when did this period of making hourly entries begin, do [69] you recollect the exact date?

A. No, I couldn't. We had trouble with the tray thickener and Mr. Gray came up from the Desert Silver to try to straighten out for us and from that

(Testimony of H. M. Childers.)

time on we had to fill in our report every hour. The ball mill man, from the time I went to work there, he had to make reports every hour.

Q. Let us turn to the month of August, 1940, you were employed at that time? A. Yes.

Q. And you were working as a solution man at that time? A. I believe I was.

Q. Turn to August 31, 1940 and I will ask if that is your solution sheet for that date?

A. Yes.

Q. And August 30, 1940, is that your sheet?

A. Yes, that is right.

Q. And that is your signature? A. Yes

Q. And August 29, 1940, that is your signature?

A. Yes.

Q. Would you say that on August 29th you had any time for lunch, Mr. Childers?

A. There was no difference in the hours. When this mill is down that doesn't signify there isn't work for the solution man to do.

Q. August 27th, is that your sheet?

A. Yes.

Q. August 26th, is that your sheet? [70]

A. Yes.

Q. August 25th, is that your sheet?

A. Yes.

Q. August 24th, is that your sheet?

A. Yes.

Q. August 21st, is that your sheet?

A. Yes.

(Testimony of H. M. Childers.)

Q. So that all these sheets of the month of August signed by you would be your sheets?

A. I would say they are.

Q. Any one of those bearing your signature would be yours? A. Yes.

Mr. Thatcher: We offer these in evidence.

Mr. Scanlan: No objection.

The Court: They may be admitted.

Clerk: Defendant's F.

The Court: This case and court will be in recess until tomorrow morning at 10 o'clock.

(Recess taken at 4:12 P. M.) [71]

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Thursday, October 22, 1942.

10:00 A. M.

Attorneys present as at previous session.

### MR. CHILDERS

resumed the witness stand on further cross-examination by Mr. Thatcher.

Q. Mr. Childers, I believe you testified when you were working as a solution man you couldn't leave the mill with the ball mill man during your lunch because of his lack of experience, is that correct? A. Yes.

Q. Can you give the names of some of the men who worked with you as ball mill men when you were working on solution?

(Testimony of H. M. Childers.)

A. A man by the name of Green, I don't know his first name.

Q. Do you know whether Green ever had any mill experience? A. He told me he had not.

Q. Did you ever work with Mr. Fox

A. Yes.

Q. As a ball man? A. Yes.

Q. Did you feel Mr. Fox was so inexperienced you couldn't leave the mill in his charge?

A. No.

Q. You did not? A. No.

Q. Did you ever work with Mr. Ferris?

A. Yes.

Q. As ball man? A. Yes. [72]

Q. Did you ever feel Mr. Ferris was so inexperienced that you couldn't leave the mill in hid charge? A. No, I never did.

Q. Mr. Ferris went to work as a solution man, did he not? A. No, he never.

Q. Not at any time?

A. Not that I know of. He worked as ball mill man at some other mill.

Q. He never worked as solution man at the Summit King?

A. He took the solution job after working with me.

Q. Did you ever work with Mr. Gilbreth?

A. I don't think I did, no.

Q. Did you work with Mr. Merrill Hutchins?

A. No.

(Testimony of H. M. Childers.)

Q. Did you ever work with Mr. Morden on the ball mill? A. No.

Q. Who else did you work with that you know?

A. Dustin.

Q. Did Mr. Dustin ever have any solution experience? A. No.

Q. Did he ever have any previous mill experience that you know of.

A. None, outside of the mechanical end of it. He was a mechanic.

Q. However, while you were working with Mr. Fox on the ball you never left the mill in charge of Mr. Fox while you took lunch? A. No.

Q. Did you fill out your own time cards, Mr. Childers? A. Yes. [73]

Q. And they are in your own handwriting?

A. Yes.

Q. I hand you what purports to be the time cards of May 18, 1940 through June 19, 1940, and ask if those are your cards?

A. Do I have to go through them all?

Q. Well, if you can identify them briefly.

A. All I see of them are mine.

Mr. Thatcher: I should like to offer these in evidence.

Mr. Scanlan: No objection.

The Court: They may be admitted.

Clerk: Defendant's G.

Q. Did you ever mark overtime on any of your time cards, Mr. Childers? A. Yes.

Q. What was that for?

(Testimony of H. M. Childers.)

A. Well, as I recall, we lined the ball mill once, or I believe it was while I was there and had overtime at that time, worked longer than eight hours, and we cleaned out the tray thickener once and I think I worked overtime that time.

Q. Were you ever disallowed any overtime when you marked it on your card? A. No.

Q. Did you ever mark any overtime for work done during the lunch hour? A. No.

Q. You testified yesterday, I believe, that you went to the change house often at the end of your shift? A. I believe I did, yes. [74]

Q. What did you do in the change house, Mr. Childers? A. I changed my clothes.

Q. Was there a shower in the change house?

A. Yes.

Q. Did you take a shower?

A. Sometimes.

Q. How long was that before the end of your shift?

A. We used to figure to go up there 15 minutes before the end of the shift; used to figure going up at quarter to three on day shift.

Q. At that time the other man on shift was left in charge of the mill? A. Yes.

Q. Did you ever do any reading during the 8-hour shift? A. Yes.

Q. What, in particular, did you read?

A. Well, they had different periodicals around there. They had the Mining Engineering and various magazines lying around. I might pick up and

(Testimony of H. M. Childers.)

read an article sometimes that was called to my attention, or I might pick it up and look at it.

Q. You usually brought your newspaper on the job, did you not, Mr. Childers?

A. No sir, I never brought a newspaper.

Q. Were there any other magazines other than scientific periodicals? A. Yes.

Q. What were those?

A. I don't recall what they were. [75]

Q. Did you often read those during your working period?

A. Not that I remember of, no.

Q. You never read anything other than scientific periodicals?

A. They had a lot of catalogues; I would look through them.

Q. How often a day did you do that?

A. I couldn't say that, how often in the day. I might consider everything was in good shape and I would be standing around where I could see the mill and I would pick up one of these and look through it a little.

Q. Did you ever sit down and read one of those magazines, periodicals? A. No.

Q. Did you ever sit down during the day, during shift? A. Yes.

Q. But you didn't read while you sat there?

A. On that question I might have been sitting or standing up. I never spent any length of time at it at any time.

Q. Did you ever take five at any time during the

(Testimony of H. M. Childers.)

day? A. What do you mean by taking five?

Q. Take a few minutes off work, smoke a cigarette?

A. There is no such thing as taking five. You are on the job where you can see. I smoked cigarettes when I felt like it.

Q. Was there any rule of the mill requiring you to use the change house? A. No.

Q. You did that at your own convenience?

A. Yes.

Mr. Thatcher: I think that is all. [76]

#### Re-direct Examination

By Mr. Scanlan

Q. Mr. Childers, you were asked questions about changing your clothes in the mill and you have also testified to changing them in the change house. Was that the continuous practice as to changing them in the change house at the time?

A. You mean by me or by all?

Q. By yourself.

A. As I stated yesterday, I changed about a third of the time I was there.

Q. Was there any particular reason for changing your clothes in the mill?

A. Well there was, yes.

Q. What was it?

A. We rode the bus to work and the bus came up to the mill and unloaded the men and our relief man was on that bus and he would come in the mill and I was to be ready to get on the bus or hold up the men from the mine, and so I had to be ready

(Testimony of H. M. Childers.)

for the bus within a matter of two minutes from the time that it arrived there.

Q. How long did that practice continue?

A. All the time the bus was running out there.

Q. Did the bus run all the time during the period of your employment? A. No.

Q. Do you remember when it commenced running?

A. I couldn't say. As I recollect, it was in the summer of 1940 some time.

Q. Will you explain again more completely the practice as to [77] the three shifts, change in shift?

A. Why the way they changed shifts, the man coming on would get off the bus and walk down to the mill in their street clothes and we would meet them in the door or inside the mill and if we had anything to tell them, we would tell them there and go on up and get on the bus. That was the custom of changing shifts and that was the way we were relieved. There was no time to waste there between shifts because the bus—if we held up the bus we were holding up about 25 men that were riding the bus from the mine.

Q. Were there any instructions posted or otherwise from the management, relative to being ready for the bus?

A. Not that I know of to go in from work, but there was a notice to the effect where we were to meet the bus going to work and the time we should meet it.

(Testimony of H. M. Childers.)

Q. Did the management have anything to do with the operation of the bus?

A. Not that I know of except that they took the bus fare out of our wages on the check and these notices were posted from the office—this notice that I recall was posted from the office, about where to meet the bus and at what time.

Q. Was there any other reason, other than what you have just stated, for changing your clothes in the mill? A. Yes.

Q. What was it?

A. Well, as I said yesterday, I didn't care to leave the responsibility on somebody else that wasn't getting the money for it that I was and I didn't think was capable of handling it and [78] that is why I quit changing in the change room; and another reason, I seen one of the men that changed in the change room come down from the change room with a bedbug on him and from that time on I didn't change in the change room.

Q. Did the fact that you changed from your working clothes into street clothes in the mill have any effect upon your work or services?

Mr. Thatcher: Objected to as calling for conclusion of the witness.

The Court: I will permit it, subject to the objection.

A. No.

Q. While you were in your street clothes did you give your attention to your work the same as you did when you had your working clothes on?

(Testimony of H. M. Childers.)

A. Yes.

Q. Were there any occasions that you can recall where you had to attend to something in your street clothes? A. Yes.

Q. What was it?

A. Well, there was one time that the clarifying tank run over and I had to go down to work on that in my street clothes, and another time I had to change an agitator, was beginning to stick, and I had to go down underneath and open a valve to start it again in my street clothes. That is two instances that I know of.

Q. Is it customary in mills around the country to have reading matter in the mills?

A. Every one I can recall it is. [79]

Q. Did you ever have any instructions in the Summit King mill against reading on shift?

A. No.

Q. While working as a solution man, was it customary to take the tests during the same hour or during each hour every shift?

A. As far as I was concerned, I used to try to get them on the hour so that I would have a regular routine and in that way I would eliminate any possibility of overlooking anything and I would know the condition of the mill better if I did it on the hour, but I couldn't say what the other men did.

Mr. Scanlan: That is all.

#### Re-Cross Examination

By Mr. Thatcher

Q. After making your tests, did you make entries of your tests on the solution sheet every hour?

(Testimony of H. M. Childers.)

A. If I was required I did. Some things you weren't required to report.

Q. What were those?

A. Checking the clarifying tanks and precipitation and looking after the zinc feeder and checking the zinc trays for values. That wasn't entered on the report sheet at all. That is all I recall now.

Mr. Thatcher: That is all.

Mr. Scanlan: That is all, Mr. Childers.

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MR. WARREN S. MORDEN,

a witness on behalf of plaintiffs, having been sworn, testified as follows:

Direct Examination

By Mr. Scanlan:

Q. Will you state your name please?

A. Warren S. Morden. [80]

Q. Where do you reside?

A. At Fallon, Nevada.

Q. Were you ever employed by the Summit King Mines, Limited, in Churchill County, Nevada.

A. Yes.

Q. When did you commence your employment with them?

A. Along about January 2nd, I believe, 1940.

Q. Was that when the mill commenced operation?

A. Yes, when it first started.

Q. When did you terminate your employment with the company? A. April 26, 1940.

(Testimony of Warren S. Morden.)

Q. In what capacity were you employed?

A. As ball mill man.

Q. All the time? A. All the time.

Q. And what were your duties generally as ball mill man?

A. Well, the schedule hour by hour was pretty much the same. We would come on shift and generally I would check the density first on the classifier overflow and after I was sure of the density, I would go around and check the feed on the feed conveyor and then I would go on around the ball mill and look at the cyanide and see that it was dripping, had a little drip cock for a feeder, and go on around and look at the solution man's sheet the last titration for lime and cyanide; then I would generally go back and change my clothes. I had my clothes just below the ball mill floor. Then I would get my cyanide and weigh it up and generally I would check the tonnage. We had a little frame we placed on this feeder conveyor. It travelled about two [81] feet a minute, and we placed this frame on it and we would take this measured distance off the feed that lay on this conveyor and put in a box; then we weighed this box and computed the tonnage by the amount of feed that was taken off this feeder conveyor; and then I would generally go up and get the daily balls, the number of balls for the daily ball change. Well then, if the solution man had done his titrating to inform me of the lime and cyanide contents of the solution, then I would generally know how much lime to add or how much cyanide to add rather to build it up or let

(Testimony of Warren S. Morden.)

it drop. Then I would generally check the classifier overflow the second time, and that would just about complete my first round.

Q. You spoke about changing your clothes. Does that mean after you come on shift?

A. Yes sir.

Q. You mean you did some of your work in your street clothes?

A. I always on the start put my working clothes on after I made the rounds.

Q. How about after you ended the shift about changing clothes?

A. Well, at that time we were driving our own cars. We alternated. My partner, he would drive his car a week and then I would drive my car a week, so we alternated in that way to save on gas and rubber. We would generally change after we came off shift.

Q. Did you ride back and forth in your own or your partner's car all the time you were employed out there?

A. All of the time. The bus service hadn't been established yet.

Q. You left the employment before they put on the bus, is that [82] it? A. Yes.

Q. When would you eat your lunch on the day shift?

A. Well, that would vary. You see when I first went to work there everything was in pretty much of a turmoil, new mill just starting off and things were upside down, quite a number of things had to be

(Testimony of Warren S. Morden.)

ironed out, and we ate lunch when we got time. Lots of times we didn't get time to eat lunch at all. My partner went without lunch a number of times but I generally got a sandwich. That was when we first started, trying to get lime up and put in a ton of lime a shift or possibly more, and had to slack this lime and pack it up in the buckets and take care of the mill operation too.

Q. How long did you work on day shift; that is, how much time did you put in the mill on day shift?

A. You mean my average working time on shift?

Q. Yes.

A. Well, I was generally on my toes the full shift. I wouldn't say that I was always in a hurry after the mill was organized and running half way properly. There was more leisure time afterwards, but on the start we were on our toes, you might say, from the time we went on until the time we went off.

Q. When would you eat your lunch on the afternoon shift? A. Well, most any time.

Q. Where would you eat it?

A. Well, I generally ate my lunch right alongside the classifier up by the mill.

Q. And on the grave yard shift, when did you eat your lunch? [83]

A. Well, I ate that generally after I made my first round.

Q. Was there any time during your employment there that you took an hour for lunch or an hour for yourself? A. No.

Q. Was there any time that you took three-quarters of an hour for lunch or for yourself?

(Testimony of Warren S. Morden.)

A. Well, there might have been times when it would be three-quarters of an hour before I completed my lunch.

Q. Was that all taken up in eating of your lunch?

A. No sir. It was interrupted by some adjustment to be made or something to be attended to.

Q. Was there any time during your employment that you took as much as half an hour wholly for eating of your lunch?

A. No, it generally took me around 15 to 20 minutes to eat my lunch.

Q. Were you in a place where you could observe your work and what was going on during that time that you were eating your lunch?

A. Yes, I generally eat where I could observe the operation.

Q. How many hours did you put in during the afternoon shift on the solution or ball mill?

A. You mean actual time working?

Q. Yes. A. Well, it would be eight hours.

Q. And on grave yard shift? A. The same.

Q. I believe you testified you worked as a ball mill man all the time? [84] A. Yes.

Q. Did you ever relieve the solution man at any time? A. Ever relieve the solution man?

Q. Yes, for lunch or any other purpose?

A. Well, my partner sometimes would leave for a few minutes.

Q. Who do you call your partner?

A. Mr. Sutton.

Q. What was he?

(Testimony of Warren S. Morden.)

A. He was the solution man.

Q. All right, continue.

A. He would leave a few minutes. He would generally tell me about it and notify me of those things that might go wrong or anything that was bothering, although he was a man that rarely ever left the mill.

Q. Did you ever relieve him for lunch on any shift, or any other solution man? A. No.

Q. What was your practice with reference to taking samples. Were they taken the same time every hour or every day or otherwise?

A. Well, for a long time we wasn't yet started in that routine but finally worked around where we were to take the samples on the hour, starting the hour, or we would take those samples in densities and record them on the sheet.

Q. Did you ever have any instructions as to how to take those or when to take them?

A. Well, yes, there were various orders. They would be changed from time to time. They were posted on the bulletin [85] board. It was quite a little while before they finally settled down to the routine where it was followed for any length of time. Generally the head sample was taken on the hour, due to the fact that it was the most important sample in the mill.

Q. Were there instructions from any one to that effect?

A. Yes, Mr. Dobson came down one day and inquired as to my method of taking the sample and

(Testimony of Warren S. Morden.)

I went thru the procedure to show him how the sample was taken and he advised me that the sample should be increased, that is, the amount should be increased, and I believe at the time we were taking the sample on the half hour; that is, what I mean, like we would go on shift at three o'clock in the afternoon shift, we would take the sample at 3:30, and he advised that the sample be taken on the hour, which order was carried out through, I believe Mr. Hunt, at the time, who was in charge.

Q. I call your attention here to a paper designated "Attention Mill Men", dated December 29, 1939, and ask if you have ever seen that or a copy of it?

A. Does the company have the original of this copy?

Mr. Thatcher: No, we haven't.

Q. Have you seen what would be the substance of that, another paper, another copy?

A. I didn't get you.

Q. O will withdraw that question. Did you see an original of what is contained in that?

A. Yes sir.

Q. By whom was it signed?

A. Mr. Sage.

[86]

Q. Where did you see it?

A. Posted on the bulletin board at the office in the mill, at the dog house.

Q. How long was it there, if you know?

A. Well, to my knowledge it was still there when I left.

(Testimony of Warren S. Morden.)

Q. I call your attention to rule 1 of Defendant's Exhibit B, which reads as follows: "The solution man on shift will be in charge of the mill and will be responsible for same." Was that rule observed, to your knowledge?

A. Well in the sense that it generally is in a cyanide plant.

Q. "2. Men will work seven hour shifts, relieving each other one hour for lunch. For example; the ball mill operator will relieve the solution man from 11:00 to 12:00 and the solution man will relieve the ball mill man from 12:00 to 1:00. The operator relieving will be responsible for the other operator's work as well as his own. This applies except in case of emergency, when other relieving hours can be arranged." Was that rule observed or not?

A. No sir. It couldn't be followed under the set-up.

Q. And was it or was it not followed?

A. No, it wasn't followed.

Q. Do you know any reason why it wasn't followed?

A. Well no more than we couldn't afford to take that time off.

Q. Did you ever get any instructions from the management relative to observing that rule or not?

A. No.

Q. I call your attention to rule 3: "Time cards will be filled out for each man on shift and signed by the solution man. He [87] will then turn them into the mill office." Was that observed?

(Testimony of Warren S. Morden.)

A. For a while.

Q. For how long a while?

A. The solution man possibly followed that rule for, oh, I would say three weeks, possibly a month.

Q. And then did it change? Was the rule then changed? A. No. No orders to that effect.

Q. Was it changed in practice?

A. Changed in practice, yes sir.

Q. In what way?

A. Well, we just got to filling our own time cards. I'll tell you how that gradually worked around. Each man made out his own time card and signed it, would generally forget to make out the time card until late. I have often changed and permitted to leave the mill before I would make out the time card and go back and fill it out.

Q. How many hours would you put on your time card?

A. Well, I don't remember on the start, but it seems to me like I recorded eight hours for the first few days. Possibly I erased it and put seven on about the third day.

Q. Why did you do that?

A. Because that was the procedure that there mill followed. I was instructed by the solution man I was to put seven hours on.

Q. And you continued to do that up until the time you terminated your employment?

A. For the balance of the time.

Q. How many hours did you work each day that you filled in for seven hours? [88]

(Testimony of Warren S. Morden.)

A. Eight hours.

Q. I call your attention to another paper, Defendant's Exhibit A, entitled, "Notice to Mill Employees on Daily Wage Basis" and dated April 23, 1941, and ask if you have ever seen that or similar paper before?

A. Well, this was posted after I left there.

Q. You don't know anything about that?

A. No, I left there on approximately the 26th of April.

Mr. Scanlan: I think that is all.

#### Cross Examination

By Mr. Thatcher:

Q. Mr. Morden, you say that the practice of having the solution man sign the time card only ran for a period of about three weeks after you were employed?

A. I wouldn't be sure of the time, but it was carried on some time after they first started the mill.

Q. Was it carried on during all the time of your employment?

A. Now I can't say that. It is possible he would sign that time card that was made out, providing I had that time card made out when he was there.

Q. As a matter of fact, you don't know?

A. Well, to be truthful, no.

Q. When you testified three weeks, you testified to a fact of which you had no knowledge?

A. As far as I know he didn't sign those time cards after the first three weeks; at least, I paid no attention to it.

(Testimony of Warren S. Morden.)

Q. I hand you what purports to be time card June 14, 1940, two months after you began your employment, and ask you if that is signed by the solution man? [89] A. Yes.

Q. Whose signature is that?

A. Mr. Sutton's.

Q. He was solution man on your shift?

A. Yes sir.

Q. I hand you time card of June 13, 1940, and ask you whose signature is that? A. That is his.

Q. I hand you time card of June 12, 1940, and ask you whose signature is that?

A. That is his signature.

Q. And April 20, 1940? A. Yes.

Q. And March 9, 1940? A. That is right.

Q. You filled out these time cards yourself, Mr. Morden, all of them? A. Yes.

Q. As a matter of fact—

A. Now, I will withdraw that. It seems to me like my partner did make a time card or two, maybe more, that I overlooked.

Q. That is the solution man on the job?

A. Yes.

Q. But the balance of the cards you made out yourself? A. Yes sir.

Q. As a matter of fact, Mr. Morden, you were employed *between 2nd* and June 14th inclusive, were you not?

A. Approximately, I don't remember. [90]

Q. Of 1940? A. 1940.

(Testimony of Warren S. Morden.)

Q. And you didn't terminate your work in April? It was, as a matter of fact, in June.

A. Well then the company records aren't straight, because I was given my time by the company records.

Q. There are the company records, Mr. Morden, you may examine them and see if you wish to change your answer on that.

The Court: It will save a little time if you call his attention to certain dates.

Q. You testified you terminated your employment in April, 1940?

A. April 26th. Now understand I am arriving at that by the amount of overtime that was turned in by the company.

Q. Well, I hand you herewith time cards of April 22nd to June 18th inclusive, and ask you if they were filled out by you? A. Yes, that is my time card.

Q. Are all these the same? Just examine them briefly.

A. Apparently there is a time card Mr. Hunt made out.

Q. And these others?

A. Yes, those are all mine.

Q. As a matter of fact, with that exception, they are all made out by you to and including June 14th?

A. Yes.

Q. Would you say then that your employment terminated on June 14, 1940?

A. Well, I will say I am not positive on the date. I was figuring the time that I was discharged, according to the time that was turned in by the com-

(Testimony of Warren S. Morden.)

pany; that is, the overtime, and I com- [91] puted it at time and a half for that number of days, which would figure out, I believe three hundred—let's see, what was that—I haven't those figures in my head right now.

Q. So as a matter of fact, Mr. Morden, your testimony which you have given here relates then only to the period between January 2nd and June 14th inclusive, testifying only as to what happened in those periods?

A. No, I am testifying what happened the time I was employed in the mill.

Q. That is between January 2nd and June 14th?

A. No, the time I was discharged, April 22nd. As you say, I don't know.

Q. You also testified, I believe, that you marked eight hours on your cards for the first three days?

A. I didn't say positively I did. I said possibly I did.

Q. I hand you cards for the first three days of your employment, January 2, 3, and 4, and ask you if you can identify them?

A. There has been an erasure made on that seven there.

Q. You are positive, Mr. Morden?

A. It looks like it.

Q. Could it ever have been an eight?

A. Well, it might have been.

Q. Those have also been changed from eight to seven?

(Testimony of Warren S. Morden.)

A. No, those look like they are the originals.

Mr. Thatcher: I should like to offer these in evidence, if the Court please.

Mr. Scanlan: No objection.

The Court: They may be admitted. [92]

Clerk: Defendant's H.

Q. Did you bring your lunch to work, Mr. Morden? A. Yes.

Q. Every day? A. Every day.

Q. Where did you generally eat your lunch in the mill?

A. Oh, it was composed of sandwiches and fruit and boiled eggs and generally what was in the house in the way of lunch stuff.

Q. Where did you eat it?

A. I generally always ate my lunch when it was stormy in the mill alongside the classifier.

Q. About how long a time did you take for eating it?

A. Well, if I go straight through my lunch, I would say 15 or 20 minutes.

Q. About 15 or 20 minutes? A. Yes.

Q. At the time you sat down to eat your lunch, did you notify the solution man that you were going to start eating? A. No, it wasn't necessary.

Q. Who was in charge of the mill, as between the ball mill and solution man, the ball mill man or the solution man?

A. The solution man was in charge.

Q. But you never notified him when you sat down to eat?

(Testimony of Warren S. Morden.)

A. I was generally right in sight of him.

Q. Would it be possible for you to sit down and eat your lunch for a full hour or forty-five minutes and leave the mill in charge of the solution man?

A. No. [93]

Q. Did you feel, as did Mr. Childers and Mr. Fox, that the solution man did not have sufficient experience to run the mill in your absence?

A. No, my partner had experience.

Q. Will you explain why you did not feel you could sit down for any period of time?

A. Well, there were various reasons. The solution man had his duties to perform and his time was taken up pretty much with his own work and my time was taken up with my work.

Q. Is there any reason why the solution man couldn't perform for one hour your duties?

A. Well, he could, but I will cite an example of why the practice wasn't followed. We were mixing black cyanide on the outside above the mill. I notified my partner that I had to go up and mix cyanide. It was rather late in the afternoon. I was on day shift; and I also told him those points that might happen, those things that were giving trouble. It happened that we were running on rather heavy ore, had rather high gravity, and the ball mill circuit had a tendency to load up, and I notified my partner, Mr. Sutton, that it was time for it to load up. I was gone quite a little while out of the mill, mixing that cyanide. I had to drain

(Testimony of Warren S. Morden.)

the cyanide solution out of the tank that it was mixed in into a storage tank, then I had to fill that tank again and dump the cyanide in the mixing tank, and when I got back the circuit had overloaded dangerously; it was right on the point of sticking the classifier.

Q. I believe you testified also that your partner would leave the mill for a few minutes during your shift on every shift? [94]

A. That I could leave the mill?

Q. Yes and you testified also that your partner, the solution man, would leave the mill a few minutes every shift? A. Yes.

Q. And the mill would be left in your charge during his absence?

A. He would generally tell me the things to watch or were giving trouble, just as I done with him.

Q. And during his absence you would watch and attend to the duties? A. Yes.

Q. You found no difficulty in doing that?

A. Lots of the time it would be I couldn't take care of all his work, certain things were neglected, yes.

Q. But all during the period of your employment this practice of the solution man leaving the mill for a few minutes at a time continued, did it not? A. Yes, it was practiced.

Q. Now during your lunch hour did the solution man take his lunch at the same time you did?

A. Sometimes.

(Testimony of Warren S. Morden.)

Q. About how often, would you say?

A. Oh, I couldn't say to that.

Q. But at other times the solution man would eat at a different time than you?

Mr. Scanlan: Just say yes or no.

A. Yes.

Q. Mr. Morden, what experience have you had in mill work prior to coming to Summit King?

[95]

A. What type of experience are you referring to?

Q. I mean mill experience.

A. Around about twenty years, not continuously, but I would say around twenty years.

Q. Had that work been confined to ball mill work only? A. Any phase of the work.

Q. Solution work as well? A. Yes sir.

Q. So as a matter of fact, when you came on the job you were experienced mill man?

A. That is right.

Q. And you were capable of handling solution work, were you? A. Yes.

Q. So if your partner left you in charge of the mill, you were able to handle the solution work as well as the ball mill?

A. As far as my chances of taking care of all of his work was concerned, yes.

Q. Did you ever work with Mr. Childers?

A. No.

Q. Did you ever work with Mr. Fox?

A. Yes.

(Testimony of Warren S. Morden.)

Q. Did Mr. Fox ever leave you in charge of the mill when he went out of the mill?

A. Well, I don't remember how we worked together. It has been quite a little while.

Q. You don't recall that? A. No, I don't.

Q. Mr. Fox might have left you in charge of the mill some time [96] when he went out?

A. Yes.

Q. As a matter of fact, that was the practice of the solution man?

A. Well, the various mill men on different shifts had different practices. I can't state how we worked it every shift.

Q. Did Mr. Fox ever tell you you were so inexperienced he did not feel he could leave you in charge of the mill at any time?

A. No, not in words.

Q. You heard Mr. Fox's testimony?

A. Yes.

Q. You heard his testimony to the effect that he couldn't leave the mill in charge of the ball mill man because the ball mill men were all inexperienced, did you? A. Yes.

Q. Did you feel that applied to you, Mr. Morden? A. Well in answering that question——

The Court: Read the question.

(Question read.)

A. No, I didn't.

Q. You felt you were perfectly capable of running any branch of the mill, either as solution or ball mill man, because of your previous experience?

(Testimony of Warren S. Morden.)

A. Yes.

Q. Mr. Morden, did you use the change house?

A. I used the change house to put my clothes in for a while.

Q. What did you do in the change house?

A. Well, I just generally put my clothes in the change house. [97]

Q. Did you use it at the beginning or at the end of the shift?

A. Well, when I was using the change house, I would use it before and after.

Q. Both before and after, at the beginning and end of the shift? A. Yes.

Q. And at the end of the shift did you take a shower in there? A. Never took a shower.

Q. About how long before the end of the shift did you go to the change house?

A. Generally just at quitting time, or after.

Q. After quitting time? A. Generally.

Q. How long after quitting time?

A. Just as soon as the relief took over.

Q. You never entered the change house before the shift was over?

A. Well, I wouldn't say never.

Q. Did you take the bus from the mine to town?

A. There was no bus.

Q. I beg your pardon, there was not at that time. I think that is all.

#### Re-Direct Examination

By Mr. Scanlan:

Q. Mr. Morden, was the time card made out by

(Testimony of Warren S. Morden.)

you and signed by the solution man, or made out by you and signed by you also?

A. I generally made my own time card out and signed it.

Q. That was general all the way through, wasn't it? A. Yes sir.

Q. Was it the general practice in the mill, while you were employed there as a ball mill man, for one man to leave the other [98] in charge of his work as well as his own?

A. It wasn't a practice. It was just in case of emergency.

Q. Was it the general practice for each man to attend to his own work wholly and by himself?

A. Well, we helped one another work on those phases of work which required help.

Q. But on the whole each man attended to his own work during the entire time? A. Yes.

Mr. Scanlan: I would like to ask the witness, if I may, a question on direct examination.

The Court: I think we will take our 10-minute recess now.

(Recess taken at 11:00 o'clock.)

11:12 A. M.

MR. MORDEN

resumed the witness stand on further re-direct examination by Mr. Scanlan.

Q. Are you sure when you quit your employment with the Summit King Mines?

(Testimony of Warren S. Morden.)

A. No, I am not.

Q. So whatever your testimony may have been heretofore may not be accurate, is that right?

A. I couldn't say for sure.

Mr. Scanlan: Now let me ask a question on direct examination.

Q. Did you ever receive eight hours' pay for any shift during your employment?

A. No. [99]

#### Re-Cross Examination

By Mr. Thatcher:

Q. Did you ever fill out your time card for eight hours on any shift during your employment?

A. I stated that I wasn't sure.

Q. Did you ever claim or ask the company for overtime for the lunch hour? A. No.

Mr. Thatcher: No further questions.

Mr. Scanlan: That is all. I would like also to ask these other two witnesses on direct examination.

Mr. Thatcher: No objection.

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#### MR. FOX

was recalled and testified as follows:

#### Direct Examination

By Mr. Scanlan:

Q. Did you ever receive wages for eight hours' work during the course of your employment with Summit King Mines?

(Testimony of Al C. Fox.)

A. No, not unless I worked over the regular shift.

Q. But I mean the regular shift? A. No.

Cross-Examination

By Mr. Thatcher:

Q. Any time you didn't work beyond the regular shift, did you ever put down eight hours on your time card?

A. Not on my time card, no.

Q. Did you ever ask the company to pay you for eight hours? A. Yes, I have.

Q. When was that? A. In this suit.

Mr. Thatcher: That is all. [100]

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MR. CHILDERS

was recalled and testified as follows:

Direct Examination

By Mr. Scanlan:

Q. Did you ever receive eight hours' wages for a shift's work during the course of your employment with Summit King Mines? A. No.

Mr. Scanlan: That is all.

Mr. Thatcher: That is all.

Mr. Scanlan: Plaintiff rests.

MR. DOBSON,

a witness on behalf of the defendants, being first sworn, testified as follows:

Direct Examination

By Mr. Thatcher:

Q. State your full name please?

A. Percy Glenside Dobson.

Q. Where do you reside, Mr. Dobson?

A. Fallon, Nevada.

Q. What is your occupation?

A. Mining engineer.

Q. By whom are you employed at the present time?

A. Summit King Mines, Limited.

Q. Were you employed by the Summit King Mines at all dates mentioned in this complaint?

A. I was.

Q. And what is your capacity there?

A. Manager.

Q. And were you manager at all times mentioned in the complaint? A. I was.

Q. What experience in mill work have you had, Mr. Dobson?

A. I have been following mining for twenty-two years and at two [101] other plants besides this we had cyanide mills and at two others we had flotation mills.

Q. As general manager of the defendant company, did you have general supervision over all of the mining operation?

A. At the Summit King?

Q. Yes. A. Yes.

(Testimony of Percy Glenside Dobson.)

Q. And that would include the mill, would it?

A. Yes.

Q. Did you ever make any inspections of the work in the mill at the Summit King?

A. I used to—I still do—I go out there two to three times a week.

Q. What do you do when you go out there?

A. I generally got out there slightly before the lunch period and I would work around in the mill, go over the records of the mill. We had the records there in the mill, and I would go over those and talk to Mr. Clawson, and then in the afternoon I would go down in the mine and come out of the mine possibly a half hour or forty-five minutes before the end of the shift, and I would spend that time in the change room with the mine superintendent.

Q. How long a time did you spend at the mill on these visits?

A. It varied from forty-five minutes to two hours.

Q. And during that period did you have an opportunity to observe these various plaintiffs that worked in the mill?

A. I think I observed all of them at various times.

Q. You have heard the testimony of Mr. Fox in this action? [102] A. Yes.

Q. On your visits did you see Mr. Fox in the mill?

A. I see him in the mill, yes.

Q. During that period you were in the mill dur-

(Testimony of Percy Glenside Dobson.)

ing the lunch hour, did you ever see Mr. Fox eating his lunch? A. Many times, yes.

Q. Where did he usually eat it?

A. Sometimes in the mill office and sometimes outside the mill office on the bench there and sometimes sitting on some steps.

Q. Do you know about how long a time he spent eating?

A. He was always leisurely and I would say, well, half an hour, well over a half hour.

Q. During the time he was eating his lunch did he ever get up and go around the mill?

A. I never once saw him get up and go around the mill.

Q. You heard the testimony of Mr. Childers?

A. Yes.

Q. Did you ever see Mr. Childers in the mill?

A. Not once.

The Court: You mean any time?

A. I beg your pardon, I thought you meant walking around. Yes, I seen him.

Q. You have seen him eating his lunch in the mill? A. Yes.

Q. Do you know about how long a time he spent eating his lunch?

A. A half hour or little better.

Q. And during that time did Mr. Childers get up and go around the mill? [103]

A. I can't recollect seeing him get up.

Q. You heard the testimony of Mr. Morden?

A. Yes.

(Testimony of Percy Glenside Dobson.)

Q. Did you ever see Mr. Morden eating lunch in the mill? A. Yes.

Q. Where did he generally eat his lunch when you saw him?

A. At the same place, sitting on those steps, on the bench, outside the office.

Q. Do you know about how long a time he took during the period you saw him?

A. Approximately the same time as the others, I would say.

Q. And while he was eating, did he get up and go around the mill?

A. I don't recall having seen him do so.

Q. Did you ever see Mr. Orville Hutchins in the mill? A. Yes.

Q. Did you ever see him eating his lunch there?

A. Yes.

Q. Do you know about how long a time he took?

A. About the same as the others. I would say Mr. Hutchins took a little longer than the others.

Q. About how long would you say that would be?

A. I would say he would take a good forty-five minutes and many times I seen him in the change room in his lunch period.

Q. Did Mr. Hutchins ever leave the mill during the lunch period that you know?

A. Yes, he did.

Q. Do you know where he went? [104]

A. Up to the change room.

Q. Any place else on the mine premises?

(Testimony of Percy Glenside Dobson.)

A. I don't remember any other place.

Q. Did Mr. Hutchins ever interrupt his lunch to look around the mill?

A. Not that I recall.

Q. Did you ever see Mr. Jones eating his lunch in the mill? A. Yes.

Q. Do you recall about how long Mr. Jones took eating?

A. He took about the same as the others.

Q. Did he ever get up and go around the mill while he was eating?

A. Not that I recollect.

Q. Did you ever see Mr. O'Neill in the mill?

A. Yes.

Q. Did you ever see him eating lunch?

A. Yes.

Q. Do you know about how long a time he took?

A. My recollection is that he took a little longer than the others.

Q. About how long would that be?

A. Forty-five minutes.

Q. Did you ever see him get up and go around the mill to attend to any duties while he was eating?

A. No.

Q. Did you ever see Mr. Sutton at lunch in the mill? A. Yes.

Q. Do you remember about how long Mr. Sutton took to eat? [105]

A. About the same as the others.

Q. And did he get up and go around the mill during the lunch period?

(Testimony of Percy Glenside Dobson.)

- A. I don't recollect seeing him.
- Q. Did you ever see Mr. Dustin in the mill?
- A. Yes.
- Q. How long did Mr. Dustin take in eating his lunch? A. About the same as the others.
- Q. Did he ever get up and leave his lunch and go around the mill?
- A. I don't remember seeing him.
- Q. Did you ever see Mr. Ferris in the mill?
- A. Yes.
- Q. Did he ever get up and leave his lunch and go around the mill?
- A. Not that I recollect.
- Q. Do you know about how long he took to eat his lunch?
- A. About the same as the others, approximately.
- Q. When you went to visit the mill on these days, did the men eat together?
- A. Very often, yes.
- Q. Were there some days when there was only one man eating?
- A. I have seen some days, yes.
- Q. But on occasion would the solution man on duty be eating while the ball mill man was working?
- A. Very often. Will you state that question again?
- (Question read.)
- A. Sometimes. [106]

(Testimony of Percy Glenside Dobson.)

Q. Do you recall any meetings with the mine or mill men at which wages were discussed?

A. Yes, in April, 1941.

Q. What was the occasion of that meeting?

A. They wanted more money. They said the cost of living was going up and they needed more money.

Q. Was any arrangement made with the men?

A. I told them that we couldn't increase the rate of wage but we could increase the time worked so that they would have an opportunity of earning more money.

Q. Did the men agree to that?

A. Yes they did.

Q. At that time did any one of the men mention the fact that they were working eight hours?

A. Not that they were working eight hours, no.

Q. Well, what was said?

A. If you refer to Childers, he said that they didn't need a full hour for lunch and they might as well get paid for it; they had to stay out there anyway, they had to be on the property at that time; they would like to get paid for it.

Q. What was your reply to that?

A. I told them they would get some kind of raise and I couldn't make exceptions for the mill.

Q. So far as the management was concerned, Mr. Dobson, subsequent to April 23, 1941, was it the position of the management the men were free for the forty-five minutes, their lunch hour?

A. That was very emphatically my instructions.

(Testimony of Percy Glenside Dobson.)

Q. Did you ever feel the men could be called to perform any [107] work during those periods?

A. No.

Q. Prior to April 23, 1941, was it the management's position that the men were free for the period of one hour? A. Yes, it was.

Q. And was it their position the men could not be called upon to perform any duties during that one hour?

A. If they did, they were to be paid for it.

Q. Was there ever any other conference with the men concerning wages?

A. Yes, they came to me, the mill men particularly came to me, and said inasmuch as the graveyard and afternoon shift had to come out in their own cars, we can't put five or six men in the cars like the miners do, so it costs us more to get out for gas and could we make some adjustment for them.

Q. When did that take place?

A. That took place in 1940.

Q. And what was the adjustment made?

A. I allowed the mill men, that is, men who had to come out in their own cars, I allowed them 35 cents more a day for compensating for only two of them being in their cars.

Q. During all of this period, from January 2, 1940 to June of 1941, did the men always use their cars? A. No, the bus came.

Q. Was that bus operated by the company?

A. It was not.

(Testimony of Percy Glenside Dobson.)

Q. What was the arrangement in regard to the bus?

A. The bus was operated by a trucker in Fallon named Lewis and [108] we agreed with the men, and the men all signed an agreement, whereby we were allowed to deduct from their wages 50 cents a shift for riding out to the mine and turned that over to the bus operator.

Q. Was the bus supposed to leave at any particular hour?

A. No, just as soon as the men were ready. It didn't have a definite schedule, never posted.

Q. In other words, it only left after the men were ready to take it? A. That is right.

Q. What is the capacity of the mill at Summit King Mines?

A. From the start of operations it averaged 54½ tons per day.

Q. What is its actual operating capacity?

A. We hope to get 70 tons out of it, but we have never averaged that.

Q. So that it always ran under average capacity?

A. That is right. We consider it a 70-ton mill, but it never averaged 70 tons.

Q. Have you ever made any examination of any mill similar in size to the Summit King Mines mill?

A. Many of them, yes.

Q. Can you state any particular one?

A. Well, one in particular was the Westgate

(Testimony of Percy Glenside Dobson.)

Milling Company, situated about 25 miles out the highway from us, and we examined that mill before we built our own mill, for the purpose we had in mind that we might rend that mill and work the ore out there until we decided whether or not our property warranted putting up a mill, and we went into that fairly carefully. It has [109] approximately the same flow sheet as ours.

Q. How about its average handled?

A. Forty-five tons, I think is what it is rated.

Q. How many men were employed per shift at Westgate?

A. They had one man per shift, except on day shift, when they had a general roustabout crew on repair work and things.

Q. Do you know of any other mills of comparable size to Summit King?

A. Not the same size as Summit King, no.

Mr. Thatcher: You may inquire.

#### Cross-Examination

By Mr. Scanlan:

Q. You testified that you went out to the mill about two or three times a week? A. I did.

Q. And that was generally on the day shift, was it not?

A. Practically always on the day shift.

Q. And on such occasions you saw those different men eating their lunch? A. Yes.

Q. And you said that each of them took approximately a half hour for their lunch?

A. Yes.

(Testimony of Percy Glenside Dobson.)

Q. And that they didn't leave their lunch and take a walk around the mill during that time?

A. I don't recall ever seeing anybody get up and walk around the mill.

Q. They knew you were present at the mill on those occasions, did they not? [110]

A. Of course they did.

Q. And you knew that they were taking this time to eat their lunch, did you not? A. Yes.

Q. Did you ever speak to them about it?

A. It was never my practice to speak to the men individually. I always passed my orders on to Mr. Clawson.

Q. Did you ever pass such orders on to Mr. Clawson to instruct the men not to take so much time for lunch?

A. Will you repeat that question?

(Question read)

A. Not to take so much time? No, I never did. In fact, what I discussed with Mr. Clawson was that the men did not have enough work to keep them occupied.

Q. Then it developed into a general practice there that the men could eat their lunch when and where they wanted and take as much time as they desired, is that true?

A. Well, certainly if they had taken more than the hour we would have drawn their attention to it, but the fact is that we knew that they were changing and taking showers on the company time.

(Testimony of Percy Glenside Dobson.)

We figured they took approximately half an hour at the end of the shift, so we figured there was an adjustment there due the men if they didn't take quite a full hour.

Q. Did you ever try to change that practice of the men taking less time for their lunch?

A. You mean taking less time?

Q. Than they were taking.

A. Do you mean did I want them to take a shorter period for [111] lunch, is that what you mean?

Q. Yes. A. No.

Q. So that the management at least acquiesced in the time that the men were taking to eat their lunch?

Mr. Thatcher: Objected to as calling for conclusion of the witness.

The Court: I think it should be limited to the witness himself.

A. Let me ask you what you want me to say now?

Q. As I understand, you were the general manager of the company? A. Yes.

Q. And you acquiesced or permitted to continue the practice of the men as to the time they would take eating their lunch?

A. I figured that the men were taking their full hour, considering the time they took for showers and the change.

Mr. Scanlan: I move the answer be stricken as not responsive to the question.

(Testimony of Percy Glenside Dobson.)

The Court: I think it is explanatory, but you can limit the question.

Q. Will you limit it to the lunch period?

(Question read)

The Court: Answer yes or no and then you can make any explanation.

A. I will say I asked that no changes be made because they took a full hour, considering their changing and taking a shower.

Q. Did any of the men take a full hour for their lunch period?

A. They may have done so; it is quite possible. [112]

Q. Do you know of any men taking a full hour for their lunch?

A. I have been told, Mr. Clawson has said—

The Court: Just what you know.

A. I never sat there with a watch and timed them. I seen them at the end of their lunch period. I seen the men get up at the end of the lunch period, but I wouldn't say whether or not they had started it right on time. I never timed them with a watch, no.

Q. In other words, your statement that these men were taking a half hour for lunch was, as you fixed it, approximately?

A. I always spent more than a half hour in the mill office and the practice was that they were there as long as half an hour or longer.

Q. You were in the mill office looking over reports and records, were you not?

(Testimony of Percy Glenside Dobson.)

A. And I walked over the mill too and looked at various workings.

Q. Would it be possible for the solution man to leave his lunch and walk around the mill without your knowing it, even though you were in the mill?

A. It might be possible, but as I say, I never saw—I can't recall ever seeing—it and I wouldn't think if he made a practice of doing that in all the time I have been out there I wouldn't notice it some.

Q. Would it be possible for the ball mill man to leave his lunch and go to some other part of the mill and attend to some work and return to his lunch without your knowing?

A. Of course it would be possible, but I say I never seen that done. [113]

Q. Was there any arrangement made, whereby each man, engaged in the operation of the mill, could take a full hour off to himself and use that hour as he saw fit?

A. Absolutely. That was my instructions; they could do anything they want and the only way we could have kept them from that was to chase them out of the mill for the full hour and I didn't feel we should do that.

Q. Do you know of any of the men taking a full hour off by themselves?

A. Well, I have seen Hutchins do it and I have seen O'Neill do it.

Q. But isn't it a fact that all of these men that you observed in the mill eating their lunch

(Testimony of Percy Glenside Dobson.)

were at a place where they could observe the greater part of the mill in which he was in charge?

A. No, because sitting in the office there they couldn't see anything and sitting outside the office the solution man couldn't look at the conditions, at the press or at the tray thickener or at the agitators. He could only see approximately one-fifth of the part, maybe one-sixth of the part, he had to supervise.

Q. Is this the same office where you mentioned you signed the reports?

A. The same office, yes.

Q. So that you would not be able to observe what the men were doing from that same office, would you?

A. No, but I could observe if they were sitting outside there.

Q. You don't know what the practice was on the afternoon or grave yard shift in respect to eating lunch?

A. No, I do not. I assume—I have—well, I can't say from my own observation, no. [114]

Q. You have had charge of a number of mills during the course of your work as a mill manager?

A. I have had charge of two, but there have been mills at plants where I have been, but I have not been manager up there.

Q. But you know of the practice in such mills, do you not? A. Yes.

Q. And isn't it the general practice, Mr. Dobson, in mills that run continuously for the twenty-

(Testimony of Percy Glenside Dobson.)

four hours to employ men on three eight-hour shifts?

A. If you are talking about mills I managed, one in Mexico it was the practice for half of the shift to go home to their homes and eat their lunches while the other half stayed. That was in Mexico—I can't think of the name of the mine.

Q. Well, isn't it a general practice, Mr. Dobson, where mills run continuously for twenty-four hours, for the men to eat their lunch while on shift?

A. Well, it seems to me it all depends whether or not if the man comes from a long distance, to eat his lunch he would do it on shift, otherwise he would go home. You can understand a man wouldn't want to go home to Fallon to eat his lunch.

Q. It would be impractical for a man to go any place away from the mill while he was employed there for eight-hour shift?

A. It would be very practical to go any place he wanted. It would be a matter of comfort and the mill was probably the most comfortable place. It was the cleanest and warmest and they didn't have to go so far.

Q. Where, for instance, could he go?

A. To the change room if he wanted to. [115]

Q. What could he find there that would occupy his time?

A. There was very little to occupy his time there.

(Testimony of Percy Glenside Dobson.)

Q. There was practically no other place to go that he could use his time to any advantage to himself, is that true?

A. To his own advantage no, unless he could relax walking around, smoke, and chatting.

Q. But while he stayed in the mill he was at a place where he could give the company the advantage of his presence at any time, is that true?

A. If it was asked for, yes.

Q. And if he wanted to volunteer, could he not do so?

A. Any man who worked extra time, all he had to do was put it on the time card and we paid him for it.

Mr. Scanlan: Will you read the question please?

(Question read)

A. If he wanted to volunteer, certainly.

Q. And wasn't it generally customary during the time that he was in the mill to voluntarily attend to any work he might see needed attention?

A. No, not during his lunch period.

Q. Did you ever know of a man, while he was eating his lunch, neglect any part of the work in his portion of the mill?

A. That mill was run for many hours without any attention, the mechanical end of the mill. If the taking of records were neglected, it wouldn't show up in our records at all. I mean, if he took a solution reading at two o'clock and another ten

(Testimony of Percy Glenside Dobson.) minutes after, we wouldn't know about that, and if he put that 10 minutes three o'clock, it would be just the same. We would [116] have no record.

Mr. Scanlan: Will you read the question please?

(Question read)

A. I say he wasn't attending to it. I would say he was neglecting on walking around, if that is what you call it. If you mean was he neglecting any of his instructed duties, I would say—

Q. No, I mean neglecting the operation of the mill, being neglectful of the operation of the mill.

Mr. Thatcher: Objected to. It assumes a fact not in evidence; something like the question of having stopped feeding your wife.

The Court: Read the question again.

(Question read)

A. While he was eating his lunch he had no responsibility so he couldn't neglect any work.

Q. In operating a mill, Mr. Dobson, isn't it a fact that something might occur very suddenly in the operation of the machinery or in the flow of pulp or ore which might be damaging to the company?

A. Oh, certainly, anything like that might happen.

Q. Do you know of anything like that that did happen while any of the men were eating their lunch?

A. No, I can't recall anything. I have seen the

(Testimony of Percy Glenside Dobson.)

ball mill, the liners in the ball mill being changed and things like that, but that is just routine repair work.

Q. Well, my question is directed to the operation of the mill. A. Yes. [117]

Q. Did any of the men ever turn in extra time for any extra work during their eight-hour shifts?

A. They never put it on the time cards, not within that eight hours, no. They put it in for overtime, of course, when they worked longer.

Q. Did anybody turn in time for overtime during the shift period from seven o'clock in the morning until three p. m.? A. No.

Q. Never did? A. Never did.

Q. And so far as you know the company never paid them for any work which they might have done during the period that they were eating lunch?

A. Well, I will adjust that as to that last question, my answer, I should say. I can't say whether they were given—if they put on the cards that they worked during the lunch hour, I can't say whether or not they ever did that, but if they did, they were certainly given time for that lunch hour if they worked, if they put it on their cards as not getting a lunch hour.

Q. Did any of these men engaged in the operation of the mill ever receive eight hours' wages between the 2nd of January, 1940, and the 22nd of April, I believe, 1942?

(Testimony of Percy Glenside Dobson.)

A. I couldn't say. They would if they put it on their time card for eight hours.

Q. But so far as you know, none of them ever received eight hours wages?

A. No, I wouldn't say so far as I know. There is no reason why—I didn't look at all the time cards. [118]

Q. Don't you know, of your own knowledge, that these men did perform services for the company during every hour of the eight-hour period which they were in attendance at the mill?

A. No.

Q. Can you tell any that didn't?

A. Well, all of them during their lunch period didn't perform any.

Q. You don't know of any of them giving any service during the lunch period, is that right?

A. What was the question?

(Question read)

A. I don't know any of them that gave any service; I can't recall it.

Q. You testified you observed several of these men taking approximately half an hour for lunch. Will you state what they did with the other half hour during the same hour?

A. The other half hour was taken up in taking a shower. That was towards the end of the shift.

Q. That isn't the question.

(Question read)

A. Well, I can't recall what they did. I don't

(Testimony of Percy Glenside Dobson.)

know whether they attended to their duties or talked or what they did. I presume they probably looked after some of their duties part of the time.

Q. In other words, while you observed them for a half hour eating their lunch, it is your belief or opinion that they attended to their duties for the other half hour?

A. I said they might have been. I didn't say that was my be- [119] lief. I said there is a chance they did.

Q. Do you know whether the men did or did not give a half hour after they finished their lunch to duties in the mill?

A. I don't know whether they did or they did not.

Q. Now with respect to the change room. You say the men took a shower bath every day?

A. I can't say every day because I wasn't out there every day, but I can say I have seen all of them at some time taking a shower. It was the general practice; that is what I believe.

Q. When would they take the shower?

A. They would take it from about some time between 2:15 and 3:00 o'clock.

Q. How often did you see Mr. Fox take a shower between 2:15 and 3:00 o'clock?

A. I can't say how often I saw him, but I have in my mind a very distinct recollection of Mr. Fox coming out of the shower, because he was always dressed better than the others and I have seen his

(Testimony of Percy Glenside Dobson.)  
hair slicked back wet and I just have that picture  
in my mind. I can't say how often.

Q. Who, if any one, was in his place in the  
mill during that time?

A. I can't say. I suppose the ball mill man  
was or the solution man, whichever case it was.

Q. Did you ever see Mr. Childers take a bath  
between 2:15 and 3:00 o'clock?

A. Yes, I have.

Q. How often?

A. I can't say. I have seen enough so that I  
would say it was [120] his general practice.

Q. Did you ever seen Mr. Morden take a bath  
between 2:15 and 3:00 o'clock?

A. Well, I haven't any recollection of him  
being up there, no I have not.

Q. Didn't their duties, of these three men I  
just mentioned, require their attention in the mill  
between two and three p. m.?

A. They could get away any time at the mill.  
One man could be away from the mill at any time,  
so it didn't.

(Question read)

Q. Can you answer that yes or no?

A. I said it didn't. The mill did not require  
their attention.

Q. It didn't require their attention?

A. No.

The Court: I would like to have that explained  
a little more. Could both leave?

(Testimony of Percy Glenside Dobson.)

A. No, I mean one man at a time, that is what I am driving at. In other words, the mill could be operated and go by itself if one man was just in attendance.

The Court: During the hours that they were supposed to be employed, were they supposed to be on duty during those hours at all times, unless some special reason called them away?

A. They were supposed to be on duty, yes.

Q. Did you ever speak to any of these men that you seen taking a shower between 2:15 and 3:00 p. m., to the effect that they should remain in the mill during that time?

A. As I said before, it was never my practice to talk to the men [121] themselves. I always took it up with the respective bosses.

Q. Did you speak to the respective bosses about this practice of the men taking a shower between two and three o'clock p. m.? A. I did.

Q. And what were the instructions that followed?

A. His explanation was that in his opinion it was all right if the men wanted to divide their lunch hour so that they took a shorter lunch period and had time to take a shower.

Q. Were their duties in the mill done for every hour during the eight-hour period?

A. You mean both men together or one man?

Q. Well, each man.

A. No, their duties weren't done. At least, the plant could operate itself.

(Testimony of Percy Glenside Dobson.)

Q. Then is it your contention that the company was employing one man more than it was necessary for them to employ?

A. Yes—one man what?

Q. Employed one more than necessary?

A. Yes.

Q. Why was that done?

A. Mainly for the reason that we didn't like to leave one man alone on an operation at night. A man might get caught in the equipment or get tangled up in some of the moving equipment and it would be very dangerous if a man was on a shift along at night and did get injured nobody knew anything about it.

Q. Couldn't a watchman have been employed for that purpose?

A. No, it is never the practice to employ watchmen for that purpose. [122]

Q. Couldn't a man be employed for less wages for that purpose?

Mr. Thatcher: Objected to as calling for speculation on the part of the witness.

The Court: Objection overruled.

(Question read)

A. Certainly he could be employed for less wages just to stand around and look.

Q. But that wasn't done? A. No.

Q. All of these men were employed because of their knowledge, experience, and ability to handle the work for which they were employed, is that true?

(Testimony of Percy Glenside Dobson.)

A. They have to have certain qualifications before we employ them, yes.

Q. Were there instructions given by the mill foreman or mill superintendent relative to whether or not they could take shower baths during the course of their eight-hour shift?

A. I don't know whether he gave those instructions or not.

Q. And were you interested enough to ascertain whether he did or not?

A. The function of the manager is to ask for results and if you get the results you want you leave a lot of that to the discretion of your subordinates.

Q. And isn't it a fact that the management did get satisfactory results in the operation of the mill?

A. As a result of the mill superintendent's and our consulting metallurgist's advice, we did.

Q. And was it not also from the men actually engaged in the [123] operation of the mill?

A. We found a lot of men there inefficient. I might say they were set in the ideas they got from other plants and wanted to run this plant the way other plants were run, so we had to let a lot go for that reason.

Q. How many men did you employ in the mill between the 2nd of January, 1940 and April, 1942?

A. I can't say.

Q. Can you give an approximate estimate?

A. I would say approximately 25—30 maybe.

(Testimony of Percy Glenside Dobson.)

Q. Were the services of Mr. Fox in the operation of the mill satisfactory during the entire period of his employment?

A. Mr. Fox was, as a rule, quite satisfactory.

Q. Was Mr. Childers? A. No.

Q. Was he discharged?

A. I believe he was, or it was put up to him that he just ought to leave.

Q. He was inched out, is that it?

A. That is right. In other words, if you tell a man his work is not satisfactory and if he can't do better he better leave, he says, "All right, I will leave." That is the situation.

The Court: We will take our recess now until 1:45 this afternoon.

(Recess taken at 12:00 o'clock) [124]

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Thursday, October 23, 1942

Afternoon Session

1:45 P. M.

MR. DOBSON

resumed the witness stand on further cross-examination by Mr. Scanlan.

Q. Was that how your notice that he was to leave was given there?

A. It wasn't my personal notice, no. That is what I understand took place between the mill superintendent and Mr. Childers.

(Testimony of Percy Glenside Dobson.)

Q. Do you know how long Mr. Childers worked there? A. Yes, he worked there over a year.

Q. And in what way was his work not satisfactory?

A. As I said before, he wouldn't follow instructions and he wanted to run the mill the way it had been run at other places where mills had been run where he came from and he neglected a lot of his duties.

Q. He was discharged, was he, soon after this committee meeting which you testified to?

A. I don't think soon after. I can't say exactly how long after. It had nothing to do with it, if that is what you mean.

Q. Now besides the two men on each shift, what other men were employed in the mill?

A. There was a mechanic and a helper and then the assayer helper used to work in crushing and depending upon the work he had to do. There were generally two other men beside Mr. Clawson.

Q. Didn't some of these men who worked as operating ball mill men and solution men also sometimes work on repair work or something of that nature?

A. I believe they did when the mill was closed down. For instance, if the ball mill was being repaired and the mill was [125] down, they probably would be occupied in that.

Q. Sutton was employed mostly on day work, wasn't he?

(Testimony of Percy Glenside Dobson.)

A. I don't think he worked day shift any more than the others. I think he was on swing shift.

Q. Hutchins worked a good deal on day shift, didn't he?

A. Hutchins, we took him off mill solution work and put him on another type of work, entirely different.

Q. Was that all day shift?

A. That was all day shift, and Mr. Hutchins looked after the mill if Mr. Clawson was sick some time.

Q. Mr. Fox also worked on day shift quite a good deal, did he not?

A. I would say one-third of his time was on day shift, for the reason he was relieving each day and the men changed shifts regularly.

Q. Childers also worked on the day shift some of the time, that is, repair work?

A. I do not believe Mr. Childers did much repair work.

Q. And those men who were working on repairs, running the ball mill, and things like that, they had an hour for lunch, did they not? A. Yes.

Q. Isn't it possible that sometimes when you saw these men taking the time that they did, that they were entitled to an hour for lunch?

A. They were always entitled to an hour for lunch.

Q. Was there any distinction in the lunch period between the men who were working as operators

(Testimony of Percy Glenside Dobson.)  
of the mill and those who were [126] working on  
repair work? A. Yes.

Q. What was it?

A. Those men often took their lunch period when  
it was convenient.

Q. Which men do you mean?

A. I mean the men on repair work.

Q. They took a definite period of time, did they  
not, like an hour, between twelve and one, or some-  
thing like that? A. Yes.

Q. And they would sit down and eat their lunch,  
would they not? A. That is right.

Q. And when you saw some of these men taking  
a half hour or three-quarters of an hour for their  
lunch, wasn't it probable that they were working  
on repairs at that time?

A. On maybe two or three occasions, but not as  
a general rule.

Q. But on some of these occasions as to which  
you testified?

A. It might be possible on two or three of the  
occasions.

Q. Now if the services of one of the men on  
the operating shift was not essential between two  
and three o'clock, why didn't you let him discon-  
tinue his work at two o'clock and go home?

A. He couldn't get home; there was no bus to  
take him home.

Q. If he arranged to use his own car he could  
have worked that way, could he not?

(Testimony of Percy Glenside Dobson.)

A. Well, you understand we didn't have the bus there for the first few months. They came in their own car. If he went home and left one man in the mill, the other had to walk.

Q. The other man could provide a car if he wanted to? [127]

A. Yes, he could if he wanted to, I suppose.

Q. At any rate, the man wasn't permitted to leave the mill and go home at two o'clock or 2:15, when he was on day shift?

A. He had a stated time to work.

Q. What time was that period of time?

A. His shift was seven hours starting and then a shorter period.

Q. And what hours was that for the day shift?

A. That would be from seven till lunch and then take an hour for lunch and then work until three in the afternoon.

Q. And oftentimes a man would go to the change room and take a shower at 2:15 o'clock, that is your testimony? A. That is right.

Q. So really some of the men were taking two hours out of the eight every day, were they not?

A. No; as I explained before, the men were more or less—when they came to work for us they were told that they had seven hours to work and they had an hour off and we more or less left it up to them if they wanted to take that hour all together or if they wanted to take a bath part of that time or if they wanted to go and walk around the plant the rest of the time.

(Testimony of Percy Glenside Dobson.)

Q. And is it your testimony the men could take a half hour for lunch period and half hour for taking a shower? A. Yes.

Q. Or he could take off an hour any other part of the day, is that your testimony?

A. We allowed him to do that, yes. In other words, they had [128] seven hours to put in work and if they wanted to spend their hour taking a shower or eating, it was up to them. We had no jurisdiction over that.

Q. Did you ever fix definitely the time that they were to take this hour?

A. We left it up to them at first, but at a later time we didn't.

Q. And a man could come to work at 7:30 in the morning if he desired and take a half hour for lunch?

A. No, because he had to relieve that man that was going off.

Q. Well, did the man going off have to wait until his relief came?

A. He had to see him when he went off, that was the common practice.

Q. So that consequently the man had to be there at the end of the shift, did he not?

A. Yes, we expected him to be there at the end of the shift.

Q. And he couldn't be off the shift?

A. He could be off before the end of the shift.

Q. And then come back and wait for his man to relieve him? A. Yes.

(Testimony of Percy Glenside Dobson.)

Q. Is that the way the mill operated all the time?

A. As I say, we left the hour up to those men that were working. They were working seven hours and they had that one extra hour and it was up to them to do what they wanted to do.

Q. Is it your testimony that none of these plaintiffs in this case worked more than seven hours a day? A. It is emphatically.

Q. And you know that of your own knowledge?

[129]

A. Wait a minute—I will restate that.

The Court: Read the question.

(Question read)

A. I have not watched them for the whole period, I never was there, but I have never seen them work more than that. As I say, I was only there on day shifts and once or twice a week.

Q. So consequently you do not know of your own knowledge that a man took a shower every day?

A. No, I do not.

Q. Or whether he took half an hour for lunch every day?

A. No, but I know the general practice.

Q. Don't you know of the general practice that a man was on shift in the mill, on day shift, between 7:00 a.m. and 3:00 p.m.?

A. No, I stated in that notice he had that hour off.

Mr. Scanlan: Read the question.

(Question read)

(Testimony of Percy Glenside Dobson.)

A. No, he was not.

Q. Not at all?

A. Not to my knowledge, and he wasn't supposed to be. It was most—

Q. Would you say of your own knowledge that he was not in the mill for eight hours every day?

A. Every day he worked you mean?

Q. Yes. A. Well, I can't say that, no.

Q. And as to the afternoon shift, would you say of your own knowledge that he was not in the mill from 3:00 P. M. until 11:00 P. M.? [130]

A. I don't know about the afternoon shift. I just know the general practice established.

Q. And you don't know either as to the general practice a mill man might have on shift in the mill between 11:00 P. M. and 7:00 A. M.?

A. I don't know from my own knowledge what was going on, but I know the practice that was established.

Q. Are you able to testify as to whether or not these rules which you had stuck up in the mill were generally observed?

A. The rule of working seven hours and taking an hour off was the general practice.

Q. That was the rule, but was the rule observed?

A. I would say, considering the time they took for a shower, yes.

Q. Well, was there anything in the rules regarding taking showers?

A. No, there was a rule for the time they worked, the number of hours.

(Testimony of Percy Glenside Dobson.)

Q. Did any of these plaintiffs receive wages for eight hours pay— A. They would have.

The Court: Wait a minute.

Q. (Continuing) —during the time which they claim they worked?

A. They got paid for everything that they put on the time card. If they didn't work eight hours and didn't put it on the time card, they weren't paid it.

Q. And if they put on seven hours, they were paid for seven? A. That is right. [131]

Q. If they put on nine hours, they were paid for nine? A. Yes.

Q. Did any ever put on nine hours?

A. If they worked overtime, yes.

Q. But you don't know whether they did or not?

A. I know some of them worked overtime, yes.

Mr. Scanlan: That is all.

#### Re-Direct Examination

By Mr. Thatcher:

Q. Mr. Dobson, how many times has the mill been down, that is, shut down, since January 2, 1940 through April, 1942?

A. Just what do you mean by shut down? Do you mean on account of power or do you mean having—

Q. Mr. Scanlan spoke of the fact that there were times when the mill shut down, the mechanics of the mill.

A. We shut down on two or three occasions to

(Testimony of Percy Glenside Dobson.)

clean out some of the tanks and that took a day or so at a time to do that.

Q. Would you be able to say how many times during that period from January 2, 1940 to April, 1942?

A. I wouldn't say with any certainty, but it would be my opinion probably two or three times.

Q. I believe you testified on cross-examination, Mr. Dobson, that one man could run that mill?

A. Yes, he could.

Q. Did you ever have any conversation with your superiors or with Mr. Clawson, the mill superintendent, in respect to employing one man on the mill, rather than two?

A. Well, it was always Mr. Clawson's contention that one man could run the plant, but as I said before, I felt, and our consulting engineer, Mr. Jarolemon felt that for the reasons I stated, accidents, and so one man could relieve the other, he thought it was safest for two men to be on the job.

Q. Your testimony is that your reason for employing two men is that one man would be required for relieving the other on the job?

A. Yes, and for the safety factor too, not having one man get tangled up in the equipment.

Mr. Thatcher: That is all, Mr. Dobson.

#### Re-Cross Examination

By Mr. Scanlan:

Q. There were always several men on day shift, were there not? A. Yes, sir.

(Testimony of Percy Glenside Dobson.)

Q. Was Mr. Clawson or any other man around there in the afternoon on day shift?

A. Inasmuch as Mr. Clawson moved out to the property, lived on the property after it was in operation a few months, I presume he dropped in there and looked at the thing to see if it was going on the afternoon shift, or possibly, as he did the repairs, if he had repair work to do, he would be working there himself some of the time.

Q. When did he move out on the property?

A. I believe it was October, I am not certain about that, of 1940.

Q. How long did he continue to live there?

A. He is living there now.

Q. How far from the mill is his home?

A. Oh, approximately 600 feet.

Q. Was there any connection, like telephone, between the mill—

A. No, there is no telephone. [133]

Q. —and his place there? A. No.

Q. Were there any bells or signals?

A. No.

Q. They could have been installed though, could they not?

A. If there was a necessity for them.

Q. Such as, for instance, calling him instead of keeping another man on shift when his services were not necessary?

A. What do you mean by that—one man instead of two?

Q. Yes.

(Testimony of Percy Glenside Dobson.)

A. Well, as I said, it could have been done and it was Mr. Clawson's contention that it should have been done but we then didn't change the policy, but did go back to that later so at present Mr. Clawson has his way and we are operating that plant with one man on shift.

Q. But these two men on each shift were always available on company property, were they not?

A. Except for the lunch period.

Q. Well, were they not always on the property?

A. I presume if they wanted to stay they could. We didn't chase them off the property.

Q. There was no objection, if one man needed the assistance of the other man, the other could be called at any time, could he not?

A. He could, and then he should have put on his card that he worked overtime.

Q. There was never at any time that any of the operating men went away from the property between the time that they went on shift and the time that the shift ended after a period of eight [134] hours?

A. I don't know where they would go. They would have to walk quite a ways to get off the property.

Mr. Scanlan: That is all.

MR. CLAWSON,

a witness on behalf of the defendant, being first sworn, testified as follows:

Direct Examination

By Mr. Thatcher:

Q. Will you state your name?

A. Raymond L. Clawson.

Q. Where do you reside, Mr. Clawson?

A. I reside at the Summit King Mines.

Q. That is near Fallon?

A. Thirty-one miles east of Fallon.

Q. By whom are you employed?

A. By the Summit King Mines, Limited.

Q. How long have you been employed there?

A. Since December, 1939, the first part of December.

Q. Have you been employed at the mill on the property?

A. Continuously since the mill went in operation.

Q. In what capacity?

A. Well, for the first few months I was a master mechanic and after the first few days in May, in 1940, I have been mill superintendent of Summit King Mines mill.

Q. Have all of these plaintiffs in this action been employed by the defendant during a certain portion of the period at least that you were mill superintendent? A. Yes.

Q. You are familiar with them all? [135]

A. Yes.

Q. Will you explain to the court just what the mechanical setup of this mill is?

(Testimony of Raymond L. Clawson.)

A. I might ask the attorney, you mean the general operation of the mill?

Q. Yes, just what the operation is.

A. Well, we have a five by six Marcy ball mill. You mean through the operation?

Q. Yes.

A. And a Dorr duplex classifier, one Dorr primary thickener, three Dorr agitators, one 5-tray Door washing thickener, and Merrill-Crowe precipitation system and two Cummings Diesel engines. Only one of them operates at a time though. That is the major operation of the mill.

Q. What happens to the ore from the time it leaves the bin as it goes through the mill?

A. It is ground by the ball mill classifier, through the classifier and settles in the primary thickener. From there it goes to the agitator and agitated and from there it is pumped up to the washing thickener, washed, and when it leaves the last thickener it is run by gravity into the tailings waste.

Q. Two men are employed on each shift in this mill?

A. They were, but not at the present time.

Q. They were at all times mentioned in this complaint? A. Yes.

Q. And that was during three shifts a day?

A. Yes, for twenty-four hours, two men on a shift.

Q. What are the duties of a ball mill man? [136]

A. A ball mill man has to oversee the general operation of the ball mill, check his densities of

(Testimony of Raymond L. Clawson.)

both classifier and ball mill, take the weights of his incoming ore and add any lime or cyanide that might be necessary, to keep the solutions up to the proper strength.

Q. Are those all of his duties during the day?

A. No, at a later date I had the ball mill man do a portion of the greasing.

Q. What experience have you had in the operation of mills?

A. Well, I will have to think back when I started—you might say the big portion of my working life. In 1914 I started working in the mill—1912.

Q. And you have worked in mills continuously?

A. Not continuously, but the major part of the time.

Q. And you are familiar with their operation?

A. I am.

Q. And with the duties to be performed by men working in them? A. Yes, sir.

Q. Could you tell the court how much time would be consumed by the ball mill man in the performance of all of these duties of which you just spoke throughout a shift?

A. Not over 50 per cent of his time.

Q. And how would the balance of his time be spent?

A. Well, that would be up to the ball mill man. That is, in this particular mill it would take not over 50 per cent. Some mills it is different. We only have one ball mill for a man to operate, whereas

(Testimony of Raymond L. Clawson.)

I was foreman in one mill where one man operated six mills and six classifiers. [137]

Q. There is only one ball mill in this particular mill? A. Yes.

Q. Is this mill a second-hand mill or built new?

A. It is absolutely a new mill.

Q. Is it regarded as an efficient operation or otherwise?

A. According to the mining men that visit it and in our own opinion, it is very efficient.

Q. Would you say that it required more or less attention than other mills of comparable size?

A. Less attention than most mills.

Q. Did the ball mill in charge of the ball mill man require a great deal of watching?

A. I will say at times yes. We have a changeable ore there at times. They did have to change the mill.

Q. About how often would that occur?

A. Well, I would say their major changes might be twice in an hour.

Q. About how much time would that consume?

A. Making the change—I would say 10 minutes.

Q. Was the ball mill man required to make any entries on paper, written, of his duties as he performed them? A. Yes, sir, every hour.

Q. And were entries made every hour?

A. I can't say positively that they came on every hour, although they showed every hour.

Q. How much time would be consumed by a ball

(Testimony of Raymond L. Clawson.)

mill man in gathering the data necessary to make the entry?

A. Well, I timed the present operator there when he come on and [138] he done it in exactly ten minutes. Now that has been done several times.

Q. So that if entries were made every hour, no more than ten minutes was consumed?

A. That included taking the densities.

Q. So that no more than ten minutes of each hour would be consumed in getting the data to make the entries? A. To make one entry.

Q. Your testimony is no more than 50 per cent of the time of the ball mill man would be consumed in actual labor?

A. When I say 50 per cent, I am giving him lots of leeway.

Q. But 50 per cent would be the maximum amount of time spent? A. Yes, sir.

Q. What, in general, were the duties of the solution man, Mr. Clawson?

A. Well, in general the solution man was made responsible for the operation of the mill in general, and also to see that the solutions were kept up to the proper strength, cyanide, lime, and the balance of the solutions throughout the mill, the pulp.

Q. What were his duties specifically?

A. Well, to take the titrations, take the densities, put the zinc on the belt, oversee the mill in general throughout; also the solution man's duties was to—

(Testimony of Raymond L. Clawson.)

not to start with, only on the grave yard shift—to fill the oil tank, and at a later date I had every solution man coming on shift to fill the fuel tank on the Diesel.

Q. How much time would you say the solution man spent during the eight-hour shift performing all of these manual duties re- [139] quired of him?

A. Not over 50 per cent of his time.

Q. What would be required of him the balance of his time on shift?

A. Well, I would say that all depended on the solution man. In the practice of running a mill, if you get your solutions balanced, there are times that you can have any length of time. You might not make an adjustment for several hours.

Q. It is perfectly possible then for this—

A. And other times you had to do it oftener.

Q. It is perfectly possible then for this mill to run an hour or more without any service of any nature being required by the solution man?

A. I would say yes, it could.

Q. Would that be very often?

A. Well, now that depends a great deal upon the efficiency of the operator and how well he can keep his ball mill man keeping his feed steady. A great deal depends on the ball mill man, whoever is operating the ball mill, how the balance of the mill operates. If he is erratic, the mill is erratic all the way through.

Q. You heard Mr. Fox's testimony, did you, Mr. Clawson?      A. Yes, sir.

(Testimony of Raymond L. Clawson.)

Q. You heard his testimony to the effect he had to keep his mind constantly upon the operation of the mill? A. Yes.

Q. Do you think that testimony is accurate in every respect?

A. I can't say that it is because I have operated before I [140] took charge of mills and I can't say my mind was always on it and I was considered a very good operator, which I must have been because I went from a practical man that I have been in charge of five different mills.

Q. Is it possible for one man to operate the mill alone without any assistance from the other?

A. Very easily.

Q. You heard Mr. Fox's testimony also, Mr. Clawson, to the effect that all the men working on the ball mill were green hands and he did not feel justified in turning the mill over to them?

A. Yes sir, I did.

Q. Were these men with whom Mr. Fox worked green hands?

A. The majority of them had the same years of experience in mills as Mr. Fox.

Q. What particular man among these men Mr. Fox worked with was green?

A. Well, the men in the complaint there Mr. Fox worked with, John Jones.

Q. Was he a green man?

A. He was absolutely a green man.

Q. Any other man?

(Testimony of Raymond L. Clawson.)

A. Mr. Dustin hadn't a great deal of experience. His recommendations showed that he had operated a ball mill at the Black Mammoth off and on before he went in there as a ball mill man. Now it is possible—we tried to get men that at least had ball mill experience, but most of our men had several years of experience.

A. As respects a green man, what was your custom when you put a [141] green man on a job?

A. My records show when we had a green man there, we tried to keep one of these men overtime to show him until he was familiar with the major duties of his job.

Q. How long did a man, after he was employed, remain a green man at the job?

A. Well, as a helper a man in that mill can take care, if he is at all intelligent, can take care of his duties after one to two days, with the proper overseeing, of course.

Q. Are the duties such as to require any particular technical knowledge or scientific knowledge?

A. No sir.

Q. Are they duties that are easily learned?

A. Very very easily learned.

Q. Would you say after a man had been at the mill, worked for a month, he would be a fairly experienced man?

A. Well, there is always in milling room for improvement. It don't make any difference how many years you may work in it, but he can operate his shift, yes.

(Testimony of Raymond L. Clawson.)

Q. During the period you were superintendent of the mill, would you say that any one of the solution men would have been justified in turning over the mill to the ball mill man while time was taken out for lunch?

A. Temporarily, yes. I have left a mill alone and in all my time never had a wreck any worse than I found in the mill with two men, and left the mill absolutely alone.

Q. Would you feel these ball mill men were perfectly capable of taking care of the mill during the lunch hour? [142]

A. Yes, I would, after one or two days.

Q. And you, yourself, would feel no hesitancy in leaving them in charge for a short period of time?

A. No, I would not; I have done it.

Q. Would that also be true of the ball mill man taking time for lunch and leaving the solution man in charge? A. Yes sir.

Q. Were the services of two men required at all times in the mill during each and every hour of the day?

A. No. In my opinion they never have been required. I would like to change that. I mean that the operations never, in my opinion, it was never necessary to have two operators.

Q. What was the purpose of having two operators at the Summit King Mines mill?

A. Well, when I took charge of the mill I wanted to change to one man. Mr. Dobson said he had taken it up before and didn't want to do

(Testimony of Raymond L. Clawson.)

it for the simple reason they were out there some distance away and to start with I wasn't even living at the mine when I first took charge, and we decided for safety's sake, as well as relieving one another, that we would operate with two men.

Q. So the two men was a matter of practice in this particular mill?

A. It was up until recent months.

Q. You stated you are familiar with all of the plaintiffs here in the action? A. Yes, sir.

Q. You know Mr. Fox, do you? [143]

A. I do.

Q. Was Mr. Fox regarded by you as an efficient workman?

Mr. Seanlan: Objected to. It is one man's opinion of another man's capacity and experience. It is calling for his opinion.

The Court: Well, I think he may be qualified to express an opinion. I will permit it, subject to the objection.

(Question read)

A. Yes sir.

Q. You had no complaint to make of Mr. Fox's performance of his duties?

A. No, I can't say I did up to the last day of our association.

Q. Were you around the mill a good deal during the day shift?

A. Well, yes. I had other duties beside the mill, but my greatest part of the time in the day time was around the mill.

(Testimony of Raymond L. Clawson.)

Q. About how much time did you spend in the mill?

A. Oh, I would say after—well, from the first two weeks it started I never left the mill. I even slept in the mill.

Q. I mean after you became superintendent.

A. If I were on the job; that is, at the mine, I usually put in generally from eight to ten hours around the plant.

Q. That is all three shifts?

A. Yes, I have been, but my general practice was to put my time in on the day shift, but I have been in the mill and made inspections when things weren't just right other shifts quite frequently.

Q. How many times during the day shift did you give instructions to the men on shift to make changes or do other things around the mill?

A. Well, that is pretty hard to give any definite amount. If it was needed, I might do it several times in a day and there might be days I never had to do anything about any instructions.

Q. About how long were you in the mill during the afternoon shift?

A. Oh, that varied. I would say that I was always there over an hour after they come on shift, but usually a greater length of time than that.

Q. Were you there at all times during the afternoon shift, all hours?

A. Well, yes, at different times. I went in at all hours.

(Testimony of Raymond L. Clawson.)

Q. And how about the grave yard shift?

A. Some on the grave yard shift but not so frequently as the afternoon because it interfered with my rest, but I have been out at the house—you know on all shifts, which was almost necessary with a man operating without a shifter.

Q. Do you know what Mr. Fox's practice was in eating lunch?

A. His practice generally was that he ate lunch either outside the little office or inside on the bench I used for my records.

Q. Do you know how much time he consumed in eating lunch?

A. I couldn't say positively how much time he used.

Q. Did he eat his lunch the same hour every day?

A. No, I wouldn't say he did.

Q. There wasn't any set time for him to eat his lunch? A. There was no set time.

Q. Did Mr. Fox ever take any other periods off during the shift [145] that you recall?

A. I will say Mr. Fox didn't take as much time off as a rule as some of the other men. Most of the time the ball mill man and the solution man would eat in the office together.

Q. After the eating period, did Mr. Fox ever take any time off?

A. Yes, he has. The fact is, I have been in there working on my records and they have stayed in there, especially in cold weather when it was

(Testimony of Raymond L. Clawson.)

the only place that was really comfortable to sit around.

Q. I mean has he ever at times outside of noon taken any time off? A. I would say yes.

Q. You would ask him what he was doing during those periods? A. No, I have not.

Q. If he was just sitting around, you said nothing to him?

A. I did not. Pardon me, I would like to change that answer. If I saw something that needed attention, yes, I would speak to him, but otherwise I wouldn't bother him. I don't think any of the men can say I bothered them when I found them sitting down.

Q. Do you know Mr. Gilbreth, one of the other plaintiffs in this action? A. I do.

Q. What were his duties in the mill?

A. To start he was ball mill man and at a later date, when Mr. Sutton left, he was advanced to solution man, which is the general practice in there, regardless of their experience. The men, if they are capable of handling solution, they were advanced according to their seniority. [146]

Q. What was Mr. Gilbreth's practice in regard to lunch periods? A. To eat in the office.

Q. Do you know how much time he consumed?

A. A great deal at times.

Q. About how long would that be?

A. I have known him sometimes to take an hour and a half. The fact is I had to speak to him

(Testimony of Raymond L. Clawson.)

several times about reading his magazines when he should be on the job.

Q. After Mr. Gilbreth had eaten his lunch, did you ever find him sitting around the mill doing no work?

A. Yes sir, I have, reading his magazine.

Q. Did you ever speak to him about what he was doing?

A. I have at times and one time he told me that that was part of his time off but it was past the noon hour and he still continued to read afterwards.

Q. Well, did it happen very often when a man was questioned while sitting and reading that he said it was part of his time off for the noon hour?

A. Yes, that was the thing they did tell me.

Q. If they told you that, did you ever ask them to perform any duties in the mill?

A. Yes sir, if there was something wrong, I called their attention to it.

Q. But if a man told you that this was part of his lunch period, you considered he wasn't under your supervision?

A. I did, unless I knew positively he had taken a great deal more time than he should have.

Q. Do you know Mr. Sutton? [147]

A. Yes sir.

Q. What was Mr. Sutton's practice in regard to lunch?

A. Mr. Sutton's practice in regard to lunch, Mr. Sutton was a very very attentive man to his mill. The fact is, the man seldom spoke. He didn't trust

(Testimony of Raymond L. Clawson.) practically anybody to do his work. I think that included Mr. Fox as well as the other helpers.

Q. What was his practice with regard to lunch?

A. Well, his practice was to eat his lunch on the steps leading from the primary thickener floor or office floor up to the agitators, that was his general rule. Sometimes he did eat in the little office.

Q. About how long did he consume as a lunch period?

A. I would say he took anywhere from 15 to 20 minutes.

Q. And what did he do at the end of his lunch period?

A. As a rule Mr. Sutton always got up and began to move around. What he done absolutely I couldn't say because—

Q. Do you know Mr. Jones?

A. Yes, I do. I hired Mr. Jones.

Q. When you hired Mr. Jones did you inform him in regard to alternating lunch hours at the mill?

A. I certainly did.

Q. Is that true with respect to Mr. Hutchins also? A. Which Mr. Hutchins?

Q. Orville Hutchins?

A. No, Orville Hutchins was hired by Mr. Sage or Mr. Dobson, I wouldn't say which. They were in operation when I took charge of the mill.

Q. Is that true with respect to Mr. Sutton? [148]

A. He was hired by the former superintendent or management.

(Testimony of Raymond L. Clawson.)

Q. And Mr. Gilbreth?

A. I hired Mr. Gilbreth personally.

Q. Was Mr. Gilbreth instructed to alternate his lunch hour?

A. He was and told to work seven hours and alternate. He was working at the time for the Penelas mine and they worked eight hours. How they worked it, I don't know, but I told him that we were only supposed to work seven hours and alternate.

Q. What was Mr. Jones' practice in regard to lunch?

A. Mr. Jones' practice was to stay as much time as possible in the office all through the shift.

Q. About how much time did he consume eating his lunch?

A. Well, until I run him out, he had as high as an hour and a half in the office.

Q. That was what he claimed to be the lunch period?

A. Yes, but I happened to have my watch on him because I was there.

Q. What was the practice of Mr. Hutchins, Orville Hutchins?

A. Orville Hutchins' practice was that he visited around and especially in the assay office with Mr. Jones, the assayer. He also carried it so far that we had to call his attention to it.

Q. About how much time did he spend at lunch?

A. From the time he started to eat until he went back to work was often well over an hour.

(Testimony of Raymond L. Clawson.)

Q. Mr. Hutchins left the mill then and went to the assay office?

A. He went to the assay office, went to the main hoist house, also the change room. In other words, he was quite a visitor. [149]

Q. Did you find Mr. Jones' work satisfactory?

A. I can't say that it was too satisfactory, no; so much that he didn't get the promotion and that is the reason he quit.

Q. Did you find Mr. Hutchins' work satisfactory? A. Mr. Orville Hutchins?

Q. Yes.

A. For quite a period, yes, but afterward he got so careless, that is the reason I let him go.

Q. Was Mr. Gilbreth's work satisfactory?

A. Sometimes, yes.

Q. It was not continuously so?

A. No, as I said, he spent too much time reading magazines in the office.

Q. Were there a number of magazines in the mill itself?

A. Yes, sir. When the mill was cleaned up behind my desk we counted 27 magazines and I took them out and destroyed them and in a very few days there were several back there again.

Q. Do you know Mr. Dustin? A. Yes, sir.

Q. What was Mr. Dustin's practice in regard to lunch?

A. His practice was to take his time off in the office or up at the assay office where he had been

(Testimony of Raymond L. Clawson.)

a helper. He often spent quite a lot of time in the assay office with Mr. Jones. He had been Mr. Jones' helper for six or seven months.

Q. And Merrill C. Hutchins, what was his practice?

A. Merrill C. Hutchins, I can't say I ever saw him out of the mill when he took his noon hour off. He sat around. The time was to be taken when most convenient for them; it was left up to [150] them.

Q. How long did Mr. Hutchins consume eating lunch?

A. I would say actually eating his lunch probably 15 to 20 minutes.

Q. Did he sit around after finishing his lunch?

A. He used to, yes.

Q. How long after?

A. Fifteen or 20 minutes sometimes; sometimes more.

Q. Did Mr. Merrill C. Hutchins ever read on the job? A. Yes, he did.

Q. For long periods?

A. Well, at times for quite a period, especially at night time.

Q. When he was found reading, did he also claim it was part of his lunch hour?

A. One particular time, yes. I asked him how much time he consumed reading his magazines instead of operating his mill. He said he did it on his lunch hour.

(Testimony of Raymond L. Clawson.)

Q. Was Mr. Merrill C. Hutchins a satisfactory employee?

A. Up to a certain period, when I had to let all my mill crew go but Mr. Fox, for neglecting their duties.

Q. You are acquainted with Mr. Childers, are you? A. I am; I hired Mr. Childers.

Q. What was Mr. Childers' practice in regard to lunch?

A. About the same as the rest of the men. Ate his lunch most always in the office.

Q. About how long a time did he take?

A. I would say from 15 to 20 minutes, and sometimes more.

Q. After he finished eating, what did he do then?

[151]

A. Sat around mostly.

Q. In the office?

A. As a rule it was outside of the office.

Q. About how long did he sit around?

A. Well, at the lunch hour, like I say, the most of them tried to consume the big end of their lunch hour by sitting down and taking their own time, mostly in the mill.

Q. Did Mr. Childers ever do any reading on the job? A. Most certainly.

Q. You have heard his testimony, have you not?

A. I did.

Q. Testimony to the effect that he read only scientific periodicals?

(Testimony of Raymond L. Clawson.)

A. Yes, but I have seen Mr. Childers bring his newspaper out there, not once but many times.

Q. Did he read that newspaper during shift?

A. I have seen him reading on shift. That wasn't on day shift, that was on afternoon shift.

Q. Did you ever speak to him about that?

A. I can't say I ever did.

Q. Did you tell Mr. Childers when he was first hired that he was expected to alternate his lunch hour with the other man on the shift?

A. I did. When I hired Mr. Childers I talked about Nivloc where he came from and asked him about the practice there. I went to his house and hired him and told him what our practice was and he said he would be glad to take the job.

Q. Do you know Mr. Morden? [152]

A. I do.

Q. What was Mr. Morden's practice in regard to the lunch hour?

A. Most of the time Mr. Morden worked for the Summit King but he worked for me probably six weeks. Mr. Morden's practice was, as near as I can say, as near as he said, which was that he usually ate right there on the steps or little platform by the ball mill and Mr. Morden took, I would say, 15 to 20 minutes for his meals.

Q. Do you know what he did with his time after that?

A. No, I can't say he did or did not take it, but I will say this, that Mr. Morden and Mr. Sutton, who were partners during Mr. Norden's period of

(Testimony of Raymond L. Clawson.)  
employment with the Summit King, they were very attentive to the mill.

Q. Is that also true of Mr. Childers?

A. I can't say that for Mr. Childers. He was neglectful.

Q. How about Mr. O'Neill, are you acquainted with him? A. I am.

Q. What was his practice in regard to the lunch period?

A. Mr. O'Neill's practice was to take a very long lunch hour.

Q. About how long?

A. Especially on night shift.

Q. How long would you say?

A. At one time he took two hours and a half.  
It was on the 29th day of November, 1940, the day before I was in the automobile wreck.

Q. At other times about how long would he take?

A. I would say he consumed his hour.

Q. His *our* all the time? [153]

A. Yes, sir. Usually he was in the mill though.

Q. Was Mr. O'Neill a satisfactory employee?

A. No, I can't say he was.

Q. Do you know Philip E. Ferris?

A. I do; I hired Mr. Ferris.

Q. Was Mr. Ferris ever told about the practice of alternating lunch hours?

A. He was. When I gave him the job. He went there temporarily and it turned out he worked there for two different periods.

Q. What was his practice in regard to lunch?

(Testimony of Raymond L. Clawson.)

A. He took his lunch and ate in the office away from the ball mill.

Q. About how long a time did he spend?

A. I would say he consumed anywhere from 15 minutes to 20 or 25 minutes to eat his meals, about like an average man does eat his lunch.

Q. What would he do with his time after he finished his meal?

A. Usually sat around there, around the office.

Q. About how long would he sit around there?

A. I would say anywhere from 30 minutes, around 30 minutes.

Q. Was Mr. Ferris a satisfactory employee?

A. He was quite satisfactory.

Q. Did these men use the change house?

A. Well, I would say all of the men did to my knowledge use the change house, excepting I couldn't say about Mr. Morden and Mr. Sutton and after I took the operation over, Mr. Fox always changed in the mill, so far as my knowledge.

Q. The balance of the men though used the change house? [154]

A. At times. Not all the time, but for quite a period when I first went there.

Q. Did they use this change house at the beginning or end of the shift? A. Both.

Q. How long before the end of the shift would they go to the change house?

A. I would say in the neighborhood of 45 minutes some, not all, because they tried to get there and take a bath. It was quite crowded when we were

(Testimony of Raymond L. Clawson.)

working a full crew in the mine and they tried to get up there and change before the miners came out of the mine and they usually would go up about 20 minutes, from 2:30 to quarter to three they would usually come out of the mine and at one time we had better than thirty men on each shift of the mine, running two shifts.

A. You heard the testimony of Mr. Fox and Mr. Childers that this mill required their constant undivided attention for a full eight hours of the day? A. Yes, sir.

Q. Is that also your opinion?

A. No, it is not.

Q. Could these men, any one of them, have taken a full hour off any time they so desired, for the purpose of eating their lunch? A. Yes.

Q. If there were two men on shift, could one man take an hour off and have gone outside the mill for lunch if he so desired?

A. He could have, and some did do it and nothing was said. [155]

Q. It would not have interferred with the operation of the mill as long as there was one man on duty? A. It should not.

Q. Was it the practice of all these men to fill out time cards themselves? A. It was.

Q. Did you, after you became superintendent, initial the cards?

A. I did. I approved of all time cards that went to the office. The men were paid at the office on my OK of the time card.

(Testimony of Raymond L. Clawson.)

Q. Do you recall any time any one of these men ever claimed overtime for working during the lunch period?

A. No, I can't say that they did.

Q. What was the lunch period prior to April 23, 1941? A. One hour.

Q. And after April 23, 1941?

A. They were supposed to have 11 minutes—the solution man was supposed to be short 11 minutes of the hour and ball mill man 12 minutes.

Q. That is, the solution was paid—

A. Seven hours and 11 minutes. Eleven minutes was paid at the rate of time and a half for overtime.

Q. And the ball man?

A. Seven hours and 12 minutes for overtime.

Q. And the lunch hour was correspondingly reduced to 48 and 49 minutes?

A. It was supposed to be, but nothing was ever said, whether they should take full hour or just the 49 minutes. I will take that back. It was posted that way, but I didn't enforce it. [156]

Q. What was your reason for enforcing it, Mr. Clawson?

A. Well, as I said before, I operated a mill as an operator for several years and the main thing with myself, I found it was a lot nicer when the boss didn't specify just how and why I had to do each and every thing and I left it up to the men a great deal for that reason. Men that work three shifts it is bad enough at any time under the best con-

(Testimony of Raymond L. Clawson.)

ditions, where they have to alternate, half the time day shift, part of the time afternoon shift, and part of the time grave yard shift.

Q. Did these men eat lunch at any particular hour?

A. No, that was up to their own convenience. I had one man that sometimes started eating before he ever had his clothes changed. He said he had stomach trouble, and especially on afternoon shift, and even in the day shift, he would often eat ahead of time.

Q. If a man consumed only 20 minutes for lunch and then later sat down for 40 minutes more and told you it was his lunch hour, did you consider that he was entitled to take that time out?

A. I certainly would.

Q. And is that often the practice in a mill?

A. In this particular mill, yes.

Q. Were there many occasions when you found the men sitting down after eating hours or after they finished their lunch?

A. Yes, I have.

Q. Did you consider they were entitled to that time? A. I did.

Q. Did you ever attempt to give those men any supervision during that period? [157]

A. I can say yes, I had given them supervision at times. As far as I know, the man would have to tell me that was his lunch period and any time they did tell me that was their lunch period, I didn't bother them.

(Testimony of Raymond L. Clawson.)

Q. But if they told you that was their lunch period they were subject to no supervision?

A. I never bothered them when they told me that. I said there is nothing in a mill I can't do myself and I think the men will admit that. If necessary I would even change pumps for them when they were eating and haven't notified them I done such a thing.

Q. Is the mill at Summit King Mines operating now? A. Yes.

Q. How many shifts is it working?

A. Running three shifts with a shortage of manpower, sometimes milling ten hours, sometimes sixteen hours.

Q. How many men are employed for each shift?

A. One shift there is two men, on the other two shifts one man. I have only four men left in the mill. I lost some boys to the Navy and never replaced them. I am operating with one man on grave yard and one man on day shift. Next Sunday there will be two men on day shift and one man each on grave yard and afternoon shift.

Q. Is the mill operating under the same tonnage conditions it did when there were two men on grave yard?

A. Slightly over the tonnage because settling always hampered the tonnage of the Summit King and we have this added time to pump it out and we are putting more tonnage per hour through [158] than we did when operating three regular shifts.

(Testimony of Raymond L. Clawson.)

Q. Do you find the operation under one-man shift satisfactory?

A. It is the highest extraction that we ever had in the period of the mill.

Q. You heard Mr. Fox's testimony to the effect that the men were kept so busy they didn't have time for lunch? A. Yes.

Q. Is that true, Mr. Clawson?

A. No, because as I said, the men I have there at the present time are operating with one man and they still have time for their lunch, although at the present time when they are operating one man, they are getting paid for eight hours' work.

Q. What was the reason then for employing a second man on these shifts?

A. As I said previously, it was against my judgment, but the management preferred to do it so that we have one man to relieve the other man and also at the time when I took charge of the mill there was no one living at the plant and a man would be absolutely alone.

Q. I believe you also testified a man had 50 per cent of the time, the ball mill man and solution man, 50 per cent of his time free of manual duties?

A. Yes, and to prove that at the present I have a man there operating all alone who is sixty-four years' old and he has time to do, and does perform, the duties of both what used to be the ball and solution man's duties.

Mr. Thatcher: You may inquire.

(Testimony of Raymond L. Clawson.)

The Court: I think we will take our recess at this time.

(Recess taken at 2:50 P. M.) [159]

3:03 P. M.

MR. CLAWSON

resumed the witness stand.

Cross-Examination

By Mr. Scanlan:

Q. Mr. Clawson, is the Summit King Mines mill operating at the present time?

A. It was day before yesterday when I left there. I haven't been in contact with it since.

Q. And the entire mill operation is running?

A. Not the entire mill. As I stated a while ago, we operate the ball mill now as we get the ore. Some days it is ten hours, some days as much as sixteen hours. The rest of the mill is all in operation.

Q. But the ball mill is not operating twenty-four hours?

A. No, because we are short of labor in the mine and can't get ahead sufficient ore.

Q. How long has it been not operating twenty-four hours? A. Well, for thirty days.

Q. So that your testimony is now that one man is doing the work now that two men formerly done is not correct, isn't that true?

A. No, I wouldn't say it wasn't correct.

(Testimony of Raymond L. Clawson.)

Q. If he doesn't have the ball mill to look after, then he doesn't do as much work?

A. One man operates the whole mill if we have the ore, including the ball mill.

Q. And if the ball mill isn't operating, he doesn't have as much work?

A. He has all the solution man's work and a few duties might come up that the ball mill man put in when it is down.

Q. What is the first mill you ever worked in?

[160]

A. The Dexter mill in Tuscarora.

Q. That worked three shifts?

A. At that time it worked two shifts; that is, worked 12-hour shifts when I first went to work in mills.

Q. What was your first employment in the mill?

A. As helper.

Q. How long did you work as helper?

A. Thirty days as helper, then I became ball man.

Q. Have you ever had any man at the Summit King mill that you could put in full charge of the ball mill within two days?

A. I can't say I could let him alone over the whole period, but I could leave him there for several hours at a time.

Q. Could you leave him there for a whole shift?

A. Yes, I have had one particular man that I could.

Q. Without previous mill experience?

(Testimony of Raymond L. Clawson.)

A. What little he had before. It was Mr. Dustin.

Q. And you gave him charge of the ball mill after two days' practice?

A. Pardon. I never did give the ball mill man charge of the mill. The solution man, under my management of the mill, has always been directing the mill. That man was his helper.

Q. Then a mill man can be qualified as a mill man with just a few days' experience?

A. Not as a thorough mill man, no.

Q. How many of these men, plaintiffs in this case, started work in the mill without any previous experience?

A. Could I have the names of those plaintiffs read?

Q. You may read them. [161]

A. One man.

Q. Just one man? A. John Jones.

Q. And when he started work at the Summit King in what capacity did he go to work?

A. As a ball mill man.

Q. How long, about?

A. Right away. He was put down as a ball mill man—no, pardon, you say when he went to work in the mill?

Q. Yes.

A. In the mill I had him first as a laborer, had him grubbing out for my house.

Q. For how long?

A. Well, I would say a matter of—pretty hard

(Testimony of Raymond L. Clawson.)

to say, that was in 1940—several days, and then I had a chance to let him go in the mine steady job and he got a job in the mine.

Q. In your experience as a mill man, Mr. Clawson, isn't it customary for mills to run twenty-four hours generally?

A. Well, yes, a cyanide and counter-current cyanide plant, as we have out there, it is customary.

Q. And isn't it customary for all mills to work eight-hour shifts?

A. I would change to say yes before the wage and hour act went into effect.

Q. And isn't it customary for all mill men to get paid for eight-hour shifts, including the time they take out for lunch?

A. Up until the time of the wage and hour act, but almost all mills are working less than eight hours now. [162]

Q. The wage and hour law has had considerable effect in changing the practice of employment of men, has it not? A. It has.

Q. And particularly in cutting down overtime hours, isn't that correct?

A. Well, yes, it does cut down overtime in this particular respect—if you work them the straight hours, they naturally would be getting an hour every day overtime.

Q. And at the time Summit King started operating, the maximum was 42 hours per week and if time was worked over that, they got time and a half for all hours over 42 hours?

(Testimony of Raymond L. Clawson.)

A. Now I didn't take charge of the mill until May, 1940 and what happened to these men before that, they weren't under my jurisdiction. I was only in charge times when the superintendent was gone once or twice on sick leave, then I took charge.

Q. Don't you know, or do you know, between October 24 1939 and October 1940 the maximum hours were 42 hours?

A. Well now we weren't in operation in October, 1939.

Q. No, that is true, but we will put it between January, 1940, and October, 1940.

A. That—

Q. That the maximum hours was 42 hours per week?

A. I couldn't say. It was 42 hours up to the time the wage hour act come into effect, whatever date that was, 40 hours, and then it was changed immediately and notice was posted ahead of time that we were to get time and a half for any time over 40 hours.

Q. And the men worked six days a week, did they not?

A. As a rule. Sometimes they worked seven days a week. [163]

Q. But generally the operators worked six days a week? A. They did.

Q. And if they worked seven hours per day for six days, they would be entitled to two hours overtime, would they not? A. They would.

(Testimony of Raymond L. Clawson.)

Q. And if they worked eight hours for six days per week, they would be entitled to six hours overtime?

A. You mean six hours a day or six hours a week?

Q. A week overtime.

A. If they worked six eight-hour shifts after the period of 40-hour shifts, yes.

Q. And was that not the reason for deducting an hour each day, so as to keep the men within the 42-hour period at first?

A. I can't say it was, no.

Q. Wasn't it the reason for marking them up at seven hours per day, in order to reduce the overtime?

A. No, I never refused a man any overtime in my life. The fact is, the management know that I have given men that worked hard on certain jobs of overtime, I gave them an extra hour.

Q. Were most of the men within the mill for the eight-hour periods of each shift?

A. They were in or around the mill, yes.

Q. And they were available, within call, if you needed them at any time?

A. I can't say to that because one man in particular, I hunted him over an hour and couldn't find him and we had a very small mill.

Q. Speaking about the mill, were they not available to your call? [164]

A. Most every man was within calling distance, yes. Outside of one or two men, practically every

(Testimony of Raymond L. Clawson.)

man spent his time in the mill, even his leisure time.

Q. And they were in the mill even during what you call leisure time?

A. Yes, or there during most of it.

Q. And subject to your call or the foreman's, or anybody else's call who was there?

A. There was only one man in authority in that mill after I took charge and that was myself. I directed all the men myself.

Q. And you controlled the discipline of the mill?

A. That was my duties.

Q. And had the right to discharge men?

A. I did.

Q. You called the attention of different men at different times as to taking what you thought too much time at the lunch period sitting around?

A. I did.

Q. And you also called the attention of different men to reading. A. I did.

Q. On shift?

A. Only when I happened to be there long enough to know that they had overstayed their time?

Q. Did you ever have occasion to discharge any man for taking too much time off in the mill?

A. No, I can't say, not directly for taking too much time, only that in my opinion that he took too much time and got into jack- [165] pots in the mill, had serious trouble in the mill from not being on shift.

Q. Did you ever discharge a man for that?

(Testimony of Raymond L. Clawson.)

A. Yes, I did. That is, I discharged him this way—it was Mr. O'Neill, and they got me out at five o'clock in the morning and he had three agitators stuck and had lost three feet of solution. Mr. Childers left at 10:30, which I was over there, and he claimed Mr. Childers was leaving him in bad shape, stuck agitators, had the mill down and no solution to run through. I told him if a man couldn't straighten his mill out in five hours, he wasn't a mill man and the best thing he could do was to quit because he would be through at seven o'clock.

Q. But that wasn't taking too much time off for lunch? A. No, it wasn't.

Q. Did you ever discharge a man for reading on shift? A. No, sir.

Q. Then, Mr. Clawson, if your evidence upon the examination is to the effect that you called the attention of the men for taking too much time for lunch, for reading too much, and you did that several times, then, Mr. Clawson, you were not exercising very much discipline over those men, were you?

A. Yes, I would say I did, but if counsel has ever worked men and you are leaving men at their own discretion over the night shift period, the less you antagonize men the better operation you have. You have different dispositions of men to handle and you have to handle them all a little bit different, you can't make a set rule.

Q. Isn't it a fact, Mr. Clawson, that these men whom you repre- [166] manded about reading on

(Testimony of Raymond L. Clawson.)

shift and you found reading afterward, were not paying any attention to your orders?

A. I can't say they were not paying any attention to my orders, but as I said, they would tell me that was their noon hour.

Q. Would you always take their word for it?

A. I had to, only the particular times when I knew that they had overstayed their noon hour.

Q. But still you never fired anybody for taking too much time?

A. I can't say I did. Pardon me, you said no one—now I did fire a man for taking too much time, but he was not operating night shift. It was Mr. Orville Hutchins.

Q. You have been living out at the mill ever since the early part of the operations commenced?

A. Since October 1, 1940.

Q. You live with your family there?

A. I do.

Q. When do you have your lunch in the day time?

A. Usually after twelve o'clock or sometimes as late as three o'clock, whenever I get time, but very seldom I ever take lunch—

Q. That would depend upon how the mill was running?

A. It would depend upon many things. Possibly Mr. Dobson would be out there. He usually came around 11:00 or 10:30. Sometimes I had to be in conference with him about different things. A man in charge of a plant can't have any given hour.

(Testimony of Raymond L. Clawson.)

Q. Consequently, Mr. Clawson, you couldn't tell very definitely whether or not a man was taking too much time for eating his lunch?

A. At times, yes, because I spent practically all my time in the [167] mill.

Q. Well, most of them would eat about the same time you did?

A. No, they did not. Most of them ate at 11:00 o'clock.

Q. In the day time?

A. In the day time, yes sir.

Q. In the operation of a mill, such as the Summit King mill, very much depends upon continuous flow of the ore and the pulp through the mill?

A. The balancing of that.

Q. And the efficiency of the mill is judged a good deal by the continuous flow of ore through the mill, is that right?

A. In one sense, yes. That is quite a deep question there. It varies. You see that takes 72 hours from the time that ore goes into that mill until it comes out and there are a lot of matters to catch those things up before it goes through. It isn't like a flotation mill.

Q. So that as a matter of fact, while the mill is continuously operating by virtue of your running in ore, then that mill is running efficiently, is it not?

A. Not necessarily, no.

Q. Well, generally speaking, is it not?

A. Efficiently mechanically maybe.

(Testimony of Raymond L. Clawson.)

Q. Well, the main purpose of a mill, of course, is to get the ore through and save the values?

A. Exactly.

Q. And that can only be done by getting the pulp, the ore, everything through the mill, is that right?

A. No, I don't say that is right. Sometimes you hold it right [168] there in the mill to get the efficiency.

Q. So long as the mill is running continuously, like a ball mill, is running smoothly, there isn't very much for a ball mill man to do?

A. Not if it is running smoothly, no.

Q. And consequently you wouldn't expect him to be running up and down if there was nothing to do?

A. I never did. I think the men will testify that that is one thing I never did expect.

Q. And the same with the solution man, if things were operating properly and he was taking his tests, samples, etc., and the pumps were operating correctly, there wasn't very much for him to do, was there?

A. Not in this particular mill, no.

Q. Therefore, isn't it customary in this mill, and all other mills, for the men to sit around, lean against the rail or something like that, when things are running smoothly?

A. I can say this is the only mill I have seen they have time to sit around. They have done it before in other operations before this that I had,

(Testimony of Raymond L. Clawson.)

and I fired several of them for sitting around, but not because they were neglecting their duties.

Q. If the ball mill was running smoothly and every mechanical contrivance in connection with it, what would you expect a ball mill man to be doing?

A. To do anything his solution man might tell him to do.

Q. Well, if the ball mill is running very smoothly, would there be anything a solution man might tell him to do?

A. Yes, he could tell him. He had the privilege of making him [169] do any of his work he might want him to do.

Q. What was necessary if the mill was running smoothly?

A. Now that goes into a question that the individual thing would have to be looked at to see whether it would be necessary or not.

Q. Doesn't the greatest part of the mill man's duty lie in observation and hearing?

A. A great per cent of it. That is, I wouldn't say a great per cent, I shouldn't say that—I would say one-third of it.

Q. Well, would you say one-half of it?

A. No, I wouldn't because in that particular mill, where the men usually congregate, they can't see the mill, only the ball mill, but that is only a very small part of the plant.

Q. I am referring to the ball mill man.

A. Oh, well, speaking of the mill we speak—pardon me, but when we speak of the mill we speak

(Testimony of Raymond L. Clawson.)

of the whole operating unit and the other we speak of as the grinding unit or the ball mill.

Q. Isn't the efficiency of the mill man determined a great deal by his ability to keep the mill running smoothly? A. Yes, sir.

Q. And if he does keep it running smoothly, he doesn't have to use his hands very much?

A. Not a great deal. As I testified, he doesn't spend a great deal of time, it can be done in as little as ten minutes.

Q. In other words, some mill men don't need to put in actual working time only a very small portion of their time?

A. There is a great deal of difference in the individual.

Q. Other men might be operating the mill and simply be on the [170] jump most of the time, isn't that a fact?

A. As in any line of business, a man can be inefficient and do that, yes.

Q. And a mill man's sense of hearing goes a long way with a ball mill man, does it not?

A. Sense of hearing and sight.

Q. And sight together? A. Both.

Q. So that a mill man does not use his hands like a miner does?

A. No; mill men are really semi-skilled labor, or you might even call them skilled labor.

Q. And that is the principal part of the schedule, in keeping the mill operating as smoothly as he can?

(Testimony of Raymond L. Clawson.)

A. Exactly, that is why they usually get more money.

Q. And very frequently in a mill there are things that go wrong very suddenly and very unexpectedly, isn't that true?

A. It can happen.

Q. And it does happen very often?

A. No, I wouldn't say very often. I would say very seldom.

Q. And on such occasions a man must act quickly and promptly in handling his work?

A. He should. They do not always do it.

Q. And for that reason a man generally keeps in close proximity to his work, so he can see or hear if anything goes wrong?

A. He should.

Q. And for that reason men are kept usually in the mill during the period of their eating lunch?

A. One man; I should say there should be one man in the plant. [171]

Q. Don't sometimes things happen that require two men to attend to?

A. I will say this, that an efficient mill man in that particular plant, there is nothing outside of mechanical adjustments that one man couldn't do. That is, however, so far—

Q. Did you ever have occasion to call any man to your assistance or help when you were trying to adjust something?

A. Yes, I often had. That isn't my particular job, to be doing mechanical labor. I am supposed

(Testimony of Raymond L. Clawson.)

to be the overseer, although I do do mechanical labor, but oftentimes I call different men if they are on shift. In most mills mill men have to do their own packing of pumps and all those things that they never had to touch in this mill, never was allowed to do so, outside of one particular case.

Q. Only one time?

A. That is the only time while I have been in charge, of time that was put on the record, to my knowledge. They may have done it unbeknownst to me.

Q. Did you ever have any man assist you in doing something you were trying to do?

A. Naturally, every mill foreman will do that. That is the test of the efficiency of the mill. The foreman wouldn't go and do any of the labor for his men. They are being paid for that work.

Q. Did the Summit King mill ever operate with one man between the 2nd of January, 1940 and 26th of April, 1942?

A. Not to my knowledge, never. Now I will say that this way, that we had two men on a shift every time I know of. Not to [172] my knowledge.

Q. They were on shift for eight hours, were they not?

A. No, on shift for seven hours.

Q. Were they not within the mill or call of anybody within the mill for eight hours?

A. Not always, because I even saw them as far as the Getchel shaft.

Q. How far is that away?

(Testimony of Raymond L. Clawson.)

A. As far as my residence, six or seven or eight hundred feet. That is a guess. Right out at my house. I sat in my living room and I saw them. That is, I saw these particular men.

Q. Was that one of these plaintiffs?

A. Yes.

Q. Is he the only one?

A. The only one I ever saw at that particular place, yes.

Q. Were the men ever permitted to go home before their eight-hour period was up?

A. I can't say that they had an eight-hour period. Our period was seven hours and seven hours eleven minutes or seven hours twelve minutes, but the period of staying at the mine, for instance day shift, was from seven o'clock in the morning until three p. m. in the afternoon.

Q. What was the afternoon shift?

A. From three p. m. until 11 p. m.

Q. And grave yard shift?

A. From 11 p. m. to 7 a. m.

Q. And each one of these operating men were on the mining property around the mill during those entire eight hours? [173]

A. I wouldn't say that they positively were. They could have went to the highway for all my knowledge, in their period off.

Q. Do you know that any one did go to the highway?

A. No, I don't, but that is the only place they

(Testimony of Raymond L. Clawson.)

could go to go off the property without taking a longer period than they do off.

Q. You don't know of any man amongst these eleven plaintiffs who went off of the company property at any time within their eight-hour period? A. Yes.

Q. Who?

A. Orville Hutchins. That is the reason I fired him. He left at 12:00 o'clock at noon one day, on a Saturday, and put in his time for his seven hours, and when he came back Monday morning I let him go.

Q. And if any of the other men went away from the property during the eight-hour period, they would have been fired?

A. No; if it was his time off, he could do as he pleased.

Q. But you don't know that they went away from the property at any time?

A. Never, only the one man.

Q. You stated, I believe, Mr. Childers was neglectful of his work? A. I did.

Q. In what way was he neglectful?

A. In getting his solutions balanced and density of tanks balanced.

Q. For how long a period had he been neglectful of that work?

A. For some time before he left. The fact is, the point of it [174] was, it was under his direction that I had a bad classification, which is the ball mill and solution man's duty. I check their individual

(Testimony of Raymond L. Clawson.)

classifier and then I check their individual No. 1 Dorr pump discharge over a period of weeks and they were neglecting their classifier and were losing values on account of coarse classification. These things were caught over a matter of a month's period there that time. This caused me extra work, caused the laboratories extra work to check on it.

Q. You heard Mr. Childers testify as to his mill experience, did you not? A. I did.

Q. And you didn't think he was competent?

A. I didn't say Mr. Childers couldn't be competent. Mr. Childers could be a very very competent mill man if he has a mind to.

Q. If the period of employment was considered to be seven hours, why were the men not permitted to go home after the seven-hour period?

A. As Mr. Dobson said previously, they were kept there to relieve the other man on his lunch period and for a safety measure more than anything else.

Q. Could they might have had a swing shift in there?

A. It is possible. The fact is, it is possible to work men only four-hour shifts. I have seen it where they only worked four-hour shifts in one place.

Q. But it was never done, was it, to permit men to go away after being out there for seven hours?

A. Not when they were out there just for the seven hours, no, not the shift men. [175]

Q. They were out there for eight hours?

(Testimony of Raymond L. Clawson.)

A. They were supposed to be on the property; for instance, a shift was from seven in the morning until three in the afternoon.

Mr. Scanlan: That is all.

Re-Direct Examination.

By Mr. Thatcher:

Q. Mr. Clawson, would you consider that these men were subject to call for each and every hour of the eight hours of their shift?

A. No, I wouldn't consider it, if they told me it was their noon hour. The fact is, many times I have made adjustments for the men and have told them that I had done it.

Mr. Thatcher: That is all.

Mr. Scanlan: That is all.

Mr. Thatcher: I would like at this time to offer in evidence the time cards of Collision Gilbreth—

Clerk: Defendant's I.

Mr. Thatcher: Orville Hutchins—

Clerk, Defendant's J.

Mr. Thatcher: R. E. Sutton—

Clerk: Defendant's K.

Mr. Thatcher: Philip Ferris—

Clerk: Defendant's L.

Mr. Thatcher: Merrill C. Hutchins—

Clerk: Defendant's M.

Mr. Thatcher: N. N. Dustin—

Clerk: Defendant's N.

Mr. Thatcher: Edward Francis O'Neill—

Clerk: Defendant's O.

(Testimony of Raymond L. Clawson.)

Mr. Thatcher: And John Jones. [176]

Clerk: Defendant's P.

Mr. Scanlan: No objections.

The Court: They may be admitted.

Mr. Thatcher: Defendant rests.

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## REBUTTAL TESTIMONY

### MR. FOX

was called in rebuttal and testified as follows:

#### Direct Examination.

By Mr. Scanlan:

Q. Mr. Fox, you heard Mr. Dobson testify as to your taking showers in the change room out there?

A. Yes.

Q. Were you in the habit of doing that?

A. No, I never did take a shower all the time I worked out there.

Q. Never at all? A. No, never.

Q. You heard also Mr. Clawson's testimony?

A. Yes.

Q. Did Mr. Clawson ever call you to help him at some work?

A. Yes, he has called me when I have been eating my lunch, my lunch bucket open and actually eating, to help stop precipitation.

Q. And has he called you more than once?

A. I would say yes; he has called me two or three times for that particular duty.

Mr. Scanlan: That is all.

Mr. Thatcher: I have no question.

Mr. Scanlan: I think that is all.

Mr. Thatcher: We rest.

Mr. Scanlan: Plaintiff rests. [177]

Mr. Thatcher: I think I would like a transcript, if the court please, and order a copy for the court and one for counsel.

The Court: The court would prefer to have one.

Mr. Thatcher: I certainly would like to have one. We are perfectly willing to pay for it if Mr. Scanlan doesn't want a copy.

Mr. Scanlan: Oh, I will take it too.

Mr. Thatcher: I suggest this, because of the fact these men are working men, I suggest at this time that the defendant temporarily pay three-fourths of the cost of the transcript and the plaintiffs one-fourth.

Mr. Scanlan: Well, there is no objection to that.

The Court: If counsel agrees upon that, that will be the order. Then a copy of the transcript will be made by the official reporter under the terms stated and the matter will be submitted on briefs to be filed, subject to the further order of the court.

(Court recessed at 3:30 P. M.)

(Duly certified by Marie McIntyre, Official Reporter.)

[Endorsed]: Filed Oct. 27, 1942. [178]

[Endorsed]: No. 10526. United States Circuit Court of Appeals for the Ninth Circuit. Al C. Fox, Collison Gilbreth, R. E. Sutton, Orville Hutchins, John S. Jones, Nephi N. Dustin, Merrill C. Hutchins, H. M. Childers, Warren S. Morden, Edward F. O'Neill and Philip Edgar Ferris, Appellants vs. Summit King Mines, Limited, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed August 13, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals  
For the Ninth Circuit

No. 10526

AL C. FOX, COLLISON GILBRETH, R. E.  
SUTTON, ORVILLE HUTCHINS, JOHN S.  
JONES, NEPHI N. DUSTIN, MERRILL C.  
HUTCHINS, H. M. CHILDERS, WARREN  
S. MORDEN, EDWARD F. O'NEILL,  
PHILIP EDGAR FERRIS,

Appellants

vs.

SUMMIT KING MINES, LIMITED,

Appellee.

STATEMENT OF POINTS AND DESIGNA-  
TION OF PARTS OF THE RECORD ON  
WHICH APPELLANT WILL RELY ON  
APPEAL

Comes Now the above named appellants, and, pursuant to Paragraph 6 or Rule 19 of the rules of the above entitled Court, makes the following statement of the points on which they intend to rely on appeal, and the following designation of the parts of the record which they think necessary for the consideration thereof:

## POINT 1

(a) That the District Court erred in its Decision and Order Denying Motion for New Trial (Cert. Record, pages 25 and 26) and holding that said District Court was without jurisdiction, notwithstanding

standing the decision of the United States Circuit Court of Appeals, Eighth Circuit, on June 30, 1942, in the case of Canyon Corporation versus National Labor Relations Board, 128 Fed. (2d) 953.

For the consideration of Subdivision (a), see the following portions of the certified record: Paragraphs I, II, III, and IV, of plaintiffs' Amended Complaint, Cert. Record, pages 2-4; Paragraphs I, II, and III, of defendant's Answer, Cert. Record, pages 10 and 11; Stipulation pertaining to issues involved and reducing the same, Cert. Record, pages 14 and 15; Opinion and Decision, Cert. Record, pages 16 to 21, inclusive; Motion for New Trial or Re-Hearing, Cert. Record, pages 22 and 23; Order Denying Motion for New Trial, Cert. Record, pages 25 and 26; Findings of Fact and Conclusions of Law, Cert. Record, pages 27 to 30, inclusive; Judgment, Cert. Record, pages 31 and 32.

(b) That the District Court erred in holding as a Conclusion of the trial Court that plaintiffs failed to establish that they performed any substantial amount of labor during the lunch hour period over and above that for which they were paid for overtime.

For a consideration of this point see (Cert. Record) Opinion and Decision, pages 16-21, Paragraphs V, VI, and VII, of Amended Complaint, pages 4-8, Stipulation reducing issues, pages 14 and 15; Transcript of Evidence: Al Fox, pages 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 27, 28, 30, 36, 41, 43, 45, 46, 47, 48, 49, 100; testimony of H. M. Childers, pages 52,

54, 55, 57, 58, 59, 60, 62, 63, 101, 107; testimony of Warren S. Morden, pages 84, 85, 87, 89, 99; testimony of P. G. Dobson, witness for defendant, pages 116, 119, 122, 133, 134, 135; testimony of Raymond S. Clawson, witness for defendant, pages 139, 140, 143, 173, 174, 175, 176; Defendant's Exhibits C, D, E, and F.

### POINT 2

That the District Court erred in its Finding of Fact (Cert. Record, Paragraph IV, page 28) that none of the plaintiffs during his period of employment by defendant was engaged in commerce or in the production of goods for commerce.

For the consideration of this point see the following portions of the Certified Record: Paragraphs I, II, III, and IV of Plaintiffs' Amended Complaint, pages 2-4; Paragraphs I, II, and III, of defendant's Answer, pages 10 and 11; Stipulation pertaining to reduction of issues, pages 14 and 15; Opinion and Decision, pages 15 to 21, inclusive; Motion for New Trial or Re-Hearing, pages 22 and 23; Order Denying Motion for New Trial, pages 25 and 28; Findings of Fact and Conclusions of Law, pages 27 to 30, inclusive; Judgment, pages 31 and 32.

### POINT 3

(a) That the District Court erred in its Finding of Fact (Cert. Record, Paragraphs V, pages 28 and 29) that said mill of the defendant operated for a period of twenty-four hours per day, divided into three shifts of eight hours each and that each of

the plaintiffs performed work, labor and service in said mill for a period of seven hours during the particular shift upon which he was working and that each of the plaintiffs was free from duty for a period of one hour during each shift for the purpose of eating his lunch.

For the consideration of this point, see the following portions of the Certified Record: Plaintiffs' Amended Complaint, Paragraphs V, VI, and VII, pages 4-8; Stipulation reducing issues, Paragraphs II and III; Opinion and Decision, pages 16-21; Defendant's Exhibit A, "Notice to Mill Employees", page 36; Defendant's Exhibit B, "Attention Mill Men", page 37; three time cards selected at random by Clerk of the District Court from defendant's Exhibits E to P and three solution or work reports selected at random by Clerk of the District Court from defendants' Exhibits C, D, and F; also, transcript of the evidence, testimony of Al C. Fox, pages 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 28, 30, 41, 43, 45, 46, 47, 48, 49, 100; testimony of H. M. Childers, pages 52, 54, 55, 57, 58, 59, 60, 62, 63, 101, 107; testimony of Warren S. Morden, pages 84, 85, 87, 88, 89, 99; testimony of P. G. Dobson, witness for defendant, pages 116, 118, 119, 122, 133, 134, 135; testimony of Raymond S. Clawson, witness for the defendant, pages 137, 138, 139, 140, 143, 145, 159, 164, 165, 166, 170, 171, 173, 174, 175, 176.

(b) That the District Court erred in its Finding of Fact (Cert. Record, Paragraph V, page 29) that each of said plaintiffs was paid in full by defendant at the rate of wages established by agree-

ment between plaintiffs and defendant, which wage was in excess of that required by the Fair Labor Standards Act.

For consideration of this point see the following portions of the Certified Record: Amended Complaint, Paragraphs V, VI, and VII; Stipulation reducing issues, Paragraphs II and III; Defendant's Exhibit A, "Notice to Mill Employees", page 36; defendant's Exhibit B, "Attention Mill Men", page 37; three time cards selected at random by Clerk of the District Court; three solution or work reports selected at random by Clerk of the District Court; testimony of Warren S. Morden, page 99.

(c) That the District Court erred in its Finding of Fact (Cert Record, Paragraph V, page 29) that each of said plaintiffs was paid overtime at the rate of one and one-half times the amount of the agreed wage for all hours worked in excess of forty-two hours a week during the period of employment from January, 1940, to October, 1940; that from October, 1940, to the termination of the employment of each of the plaintiffs, each of said plaintiffs was paid overtime at the rate of one and one-half times the agreed wage for all hours worked in excess of forty hours per week.

For consideration of this point see same designations as used for Subdivision (b) above.

#### POINT 4

That the District Court erred in its Finding of Fact (Cert. Record, Paragraphs VI, page 29) that

none of the plaintiffs made any claim for overtime other than that paid by defendant during the period of their employment by defendant and that none of said plaintiffs made any claim for the payment of overtime until the making of demand prior to the filing of the action in the present case.

For the consideration of this point, see the following portions of the Certified Record: Defendant's Exhibit A, "Notice to Mill Employees"; Defendant's Exhibit B, "Rules for Mill Men"; time cards selected by the District Court Clerk at random from defendant's Exhibits E to P, inclusive; work reports selected at random by Clerk of the District Court from defendant's Exhibits C. D. and F; Transcript of Evidence, Testimony of Al C. Fox, page 14; testimony of Warren S. Morden, page 88, testimony of H. M. Childers, pages 55, 56, 107.

#### POINT 5

That the District Court erred in its Finding of Fact (Cert. Record, Paragraph VII, page 29) that none of the plaintiffs performed any work or labor for defendant during the lunch hour or at any other time for which he did not receive pay for overtime at one and one-half times the agreed wage.

For the consideration of this point, see the following portions of the Certified Record: Defendant's Exhibit A, "Notice to Mill Employees"; Defendant's Exhibit B, "Rules for Mill Men"; time cards selected by the District Court Clerk at random from defendant's Exhibits E to P, inclusive;

work reports selected at random by Clerk of District Court from defendant's Exhibits C, D, and F; Transcript of Evidence, testimony of Al C. Fox, pages 4, 5, 9, 10, 13, 14, 15, 17, 28, 30, 41, 43, 45, 46, 49, 100; testimony of H. M. Childers, pages 54, 55, 57, 58, 59, 60, 62, 63, 101, 107; testimony of Warren S. Morden, pages 84, 85, 87, 88, 89, 99; testimony of P. G. Dobson, a witness for the defendant, pages 119, 122, 133, 134, 135; testimony of Raymond L. Clawson, a witness for the defendant, pages 137, 138, 139, 140, 143, 145, 159, 164, 165, 166, 170, 171, 173, 174, 175, 176.

#### POINT 6

That the District Court erred in its Finding of Fact (Court Record, Paragraph VIII, page 29) that the allegations contained in Paragraph IV of the plaintiff's Amended Complaint are not true.

For the consideration of this point see the following portions of the Certified Record: Paragraphs I, II, III, and IV, of plaintiffs' Amended Complaint, pages 2-4; Paragraphs I, II, and III, of defendant's Answer, pages 10 and 11; Stipulation pertaining to reduction of issues, pages 14 and 15; Opinion and Decision, pages 15 to 21, inclusive; Motion for New Trial or Re-Hearing, pages 22 and 23; Order Denying Motion for New Trial or Re-Hearing, pages 25 and 28; Findings of Fact and Conclusions of Law, pages 27 to 30, inclusive; Judgment, pages 31 and 32.

**POINT 7**

That the District Court erred in its Finding of Fact (Cert. Record, Paragraph VIII, page 29) that the allegations contained in Paragraph V of plaintiffs' Amended Complaint are not true.

For the consideration of this point, see the following portions of the Certified Record: Plaintiffs' Amended Complaint, Paragraphs V, VI, and VII, pages 4-8; Stipulation reducing issues, Paragraphs II and III; Opinion and Decision, pages 16-21; Defendant's Exhibit A, "Notice to Mill Employees", page 36; Defendant's Exhibit B, "Attention Mill Men", page 37; three time cards selected at random by Clerk of the District Court from defendant's Exhibits E to P and three solution or work reports selected at random by Clerk of the District Court from defendant's Exhibits C, D, and F; also, transcript of the evidence, testimony of Al C. Fox, pages 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 28, 30, 41, 43, 45, 46, 47, 48, 49, 100; testimony of H. M. Childers, pages 52, 54, 55, 57, 58, 59, 60, 62, 63, 101, 107; testimony of Warren S. Morden, pages 84, 85, 87, 88, 89, 99; testimony of P. G. Dobson, witness for defendant, pages 116, 118, 119, 122, 133, 134, 135; testimony of Raymond S. Clawson, witness for the defendant, pages 137, 138, 139, 140, 143, 145, 159, 164, 165, 166, 170, 171, 173, 174, 175, 176.

**POINT 8**

That the District Court erred in its Finding of Fact (Cert. Record, Paragraph VIII, page 29) that

the allegations contained in Paragraph VII of plaintiffs' Amended Complaint are not true.

For a consideration of this point see designation of Cert. Record and Transcript of Evidence designated under Point 7, above.

### POINT 9

That the Court erred in its Conclusion of Law (Cert. Record, Paragraph I, page 30) that there had been no violation of Sections 6 or 7 of the Fair Labor Standards Act, being Title 29 U.S.C.A. Sections 206 and 207, by the defendant.

For the consideration of this point the entire record, transcript of evidence, and all of the exhibits will be needed.

### POINT 10

That the Court erred in its Conclusions of Law (Cert. Record, Paragraph II, page 30) that the plaintiffs are not entitled to the relief asked for in their Amended Complaint and that the defendant is entitled to judgment herein.

For the consideration of this point, the entire record, transcript of evidence, and all of the exhibits will be needed.

### POINT 11

That the Court erred in its Conclusions of Law (Cert. Record, Paragraph III, page 30) that the defendant is entitled to recover of and from plaintiffs its costs herein incurred.

For the consideration of this point, the entire record, transcript of evidence, and all of the exhibits will be needed.

### POINT 12

That the District Court erred in entering its judgment (Cert. Record, pages 31 and 32) that plaintiffs take nothing by their Complaint and that defendant have and recover from the plaintiffs the costs of said defendant, for the reason that said judgment is contrary to the law applicable to the issues, evidence and other proof, and in particular contrary to the law applicable under the Fair Labor Standards Act, and the jurisdiction of District Courts of the United States involving the production of gold and silver in one state and shipping the same to a United States Mint in another state and which jurisdictional question we believe is correctly defined by the Circuit Court of Appeals for the Eighth Circuit, in the case of Canyon Corporation versus National Labor Relations Board, 128 Fed. (2d) 953.

For the consideration of this point, the entire record, transcript of evidence, and all of the exhibits will be needed.

Dated this 6th day of August, 1943.

MARTIN J. SCANLAN

Attorney for Appellants

308 Lyon Building

Reno, Nevada

Service of a copy of the foregoing Statement and Designation of Points on which Appellants will Rely on Appeal is hereby admitted this 6th day of August, 1943.

THATCHER AND WOOD-BURN

Attorneys for Appellee

206 North Virginia St.

Reno, Nevada

[Endorsed]: Filed Aug. 13, 1943. Paul P. O'Brien, Clerk.

